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No. 10-703

Supreme Court, U.S.
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In the Supreme Court of the United States

IBRAHIM MUMID, ET AL.,
Petitioners,

v.

ABRAHAM LINCOLN HIGH SCHOOL, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. The Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701, *et seq.*, contains a comprehensive formulation of remedies that was intended to "correct" individual violations of its terms. 20 U.S.C. §§ 1712-1718. The remedies do not include a recovery of monetary damages. The narrow question of law presented is whether, contrary to the express language of these remedial provisions, and previous decisions of this Court, Petitioners have standing to maintain a suit for damages against a school district that allegedly violated 20 U.S.C. § 1703(f).

II. The lower courts never reached the merits of Petitioners' claims under the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701, *et seq.* Instead, the lower courts concluded that Petitioners lacked standing to pursue those claims in light of the courts' inability to award them the specific remedies that they had requested. *See* Petition Appendix 15a-19a (United States Court of Appeals for the Eighth Circuit) and 43a-50a (United States District Court for the District of Minnesota). Therefore, this case presents the question of whether, despite the fact that the lower courts did not pass upon this issue, the Court has sufficient cause to consider whether plaintiffs are required to demonstrate discriminatory intent in claims brought under the Equal Educational Opportunities Act of 1974.

III. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, prohibits entities that receive federal funds from intentionally discriminating against

individuals on the basis of, *inter alia*, their national origin. *See, e.g., Alexander v. Choate*, 469 U.S. 287, 293 (1985). The narrow question of law presented is whether, contrary to this Court's ample guidance, Petitioners can establish the existence of a discriminatory intent by demonstrating that a school district's policies had a disparate impact on foreign-born students.

RULE 29.6 DISCLOSURE STATEMENT

Respondent Special School District Number 1, Minneapolis Public Schools, is a political subdivision of the State of Minnesota.

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STATEMENT OF THE CASE

Petitioners are thirteen former students of the former Abraham Lincoln High School ("ALHS"). Each of the Petitioners arrived in the United States as teenagers with little or no formal education and with limited or no knowledge of the English language. ALHS served newly arrived immigrant high school students and was operated by Respondent Institute for New Americans. Respondent Special School District No. 1, Minneapolis Public Schools ("District") first contracted with the Metropolitan Federation of Alternative Schools and then the Institute for New Americans to provide educational services to students who choose to attend ALHS and were eligible under Minnesota's Graduation Incentives Act. The District did not assign Petitioners to, or otherwise require Petitioners to enroll in, ALHS. Rather, Petitioners admittedly enrolled in ALHS on their own accord.

In 2005, some (but not all) Petitioners filed a complaint with the Minnesota Department of Education ("MDE"). Pet. App. 63a, *et seq.* The MDE complaint alleged that the District violated the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* ("IDEA"), federal regulations promulgated by the United States Department of Education pursuant to the IDEA, and Minnesota special education laws and regulations by failing "to develop a system designed to identify pupils with disabilities at the ALHS." Pet. App. 64a. During the MDE's investigation into the complaint, the District reported that most students at ALHS are English Language Learners ("ELL") and "many students are at a very beginning level of English language learning." Pet. App. 73a. The District asserted that, under

applicable special education laws, it had to rule out students' lack of English language proficiency as a cause of academic difficulties before it could determine whether a student qualified for special education services. Pet. App. 74a.

The MDE ultimately concluded that, "[i]n general, the District did not evaluate ELL students until they have been in ELL for three years. This practice seemed to be tied to the District stance that it must first rule out lack of previous instruction and limited English proficiency before a student could be evaluated." Pet. App. 85a. The MDE ultimately concluded that the District's (unwritten) special education testing practice violated the IDEA regulations and their State law counterparts. Pet. App. 89a. The MDE ordered the District to take corrective action to ameliorate these violations. Pet. App. 90a-93a. The District promptly took all actions ordered by the MDE and, on April 4, 2007, the MDE issued a letter stating that the District had discharged its obligations imposed by the complaint decision. App. 1b-2b.

Not satisfied with the educational progress they had made during their limited time at ALHS, Petitioners brought suit in the United States District Court for the District of Minnesota ("District Court"), asserting claims against the District under the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701, *et seq.* ("EEOA"); Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d ("Title VI"); and the Minnesota Human Rights Act. Each of Petitioners' claims questioned the quality of the education and services they received at ALHS. Specifically, Petitioners' EEOA claim alleged that the District had

violated 20 U.S.C. § 1703(f) by failing to take "appropriate action to overcome language barriers" which Petitioners faced. Petitioners' Title VI claims and claims under the Minnesota Human Rights Act alleged that Respondents, including the District, had discriminated against Petitioners on the basis of their national origin by refusing to administer special education eligibility tests until the students had been enrolled at ALHS for three years.[1] Petitioners' Complaint requested injunctive relief and monetary damages.

On July 16, 2008, the District Court granted Respondents' motions for summary judgment in their entirety and dismissed Petitioners' claims with prejudice. Pet. App. 51a. The District Court found that the Petitioners lacked standing to pursue their claims under the EEOA because their "injuries are not redressable [under the EEOA]." Pet. App. 43a (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992) for the proposition that "[r]edressability is an element of standing").

Specifically, the District Court concluded that Petitioners could not receive prospective injunctive relief because "no plaintiff will ever again attend

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[1] Petitioners also asserted that, in general, they had received a poor education at ALHS. *See, generally*, Pet. App. 28a-31a. To the contrary, the District introduced evidence that: ALHS staff were qualified and dedicated; the curriculum was sound; the practices at ALHS were reasonable and appropriate; and that most students at ALHS made reasonable progress." App. 5b; *see also* Pet. App. 43a (recognizing the "force" of the District's factual arguments).

[ALHS]." Pet. App. 44a.[2] Turning to Petitioners' request for money damages, the court determined that the EEOA does not provide for money damages and, therefore, the court lacked power to grant the relief sought by Petitioners. Pet. App. 50a. The court's conclusion was based on its interpretation of the provisions of the EEOA that specifically address remedies. Pet. App. 46a-50a.

The District Court dismissed Petitioners claims under Title VI for two reasons. First, the court concluded that eleven of the thirteen Petitioners had not demonstrated that they suffered any harm as a result of the District's application of its special education testing policy. While Petitioners continue to assert that they suffered "a variety of harm based on their national origin," *see* Pet. at 7, they have yet to provide any evidence that they would have been found eligible for special education services if they had been tested. *See* Pet. App. 9a. Second, the court determined that the District offered a "legitimate, nondiscriminatory explanation for its [special education testing] policy and plaintiffs have no evidence from which a jury could conclude that the explanation is pretextual." Pet. App. 39a.

After the District Court denied Petitioners' request to file a motion for reconsideration, Petitioners appealed the District Court's decision to the United States Court of Appeals for the Eighth Circuit ("Eighth

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[2] While recognizing the basis for the District Court's decision, *see* Pet. at 8, Petitioners mistakenly assert that the District Court determined that their claims were moot. Pet. at 13. While the District did raise the issue of mootness to the District Court, the court did not reach that question in issuing its decision.

Circuit") on July 23, 2008. For the first time on appeal, Petitioners argued that the District's special education testing policy was "facially discriminatory" and, therefore, the District Court erred by requiring them to demonstrate discriminatory intent under the framework established by the Court's *McDonnell Douglas Corp. v. Green*,411 U.S. 792, 802-04 (1973) decision. Pet. App. 9a; *see also* Pet. at 8-9 (identifying Petitioners' arguments to the District Court and the Eighth Circuit). Also on appeal, Petitioners reiterated their position that they were entitled to recover money damages for an alleged violation of the EEOA.[3] The Eighth Circuit rejected both arguments and affirmed the District Court's opinion in its entirety. Pet. App. 19a. This Petition followed.

REASONS FOR DENYING THE PETITION

I. THE EIGHTH CIRCUIT'S INTERPRETATION OF THE EEOA IS CONSISTENT WITH THE COURT'S DAMAGES JURISPRUDENCE, INCLUDING THE COURT'S *FRANKLIN V. GWINNETT COUNTY PUBLIC SCHOOLS* DECISION

As Petitioners assert, the question of whether damages are available as a remedy in a suit brought under the EEOA is a matter of first impression. Petition at 10. More specifically, it is a matter of first impression among the Circuit Courts of Appeal. The United States District Court for the Southern District

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[3] Petitioners did not appeal the District Court's determination that they lacked standing to receive injunctive relief under the EEOA.

of Ohio has previously addressed this issue. *See Pethel v. Dennison*, 2008 WL 859034 (S.D. Ohio 2008) (unpublished). Like the Eighth Circuit, the *Pethel* court also concluded that the EEOA does not "provide for the award of general damages" sought by the plaintiff in that case. *Id.* at * 6.

While the availability of money damages in a suit brought under the *EEOA* is a matter of first impression, this Court has previously provided a comprehensive framework for determining whether any given statute permits an award of damages. *See, e.g., Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 65-70 (1992). Thus, despite being a matter of first impression, the question of whether damages are available under the EEOA is hardly novel and does not need to be settled by the Court.

Moreover, in reaching its decision that damages are not available under the EEOA, the Eighth Circuit correctly applied this Court's jurisprudence regarding the availability of monetary damages to the text of the EEOA. Despite Petitioners' assertions to the contrary, there is no conflict between the lower courts' decisions in this matter and the *Franklin* decision.

In its *Franklin* decision, this Court recognized that it "presume[s] the availability of all appropriate remedies *unless Congress has expressly indicated otherwise*." 503 U.S. at 66 (internal citation omitted) (emphasis added). From this statement alone, Petitioners extrapolate that damages are available under the EEOA. *See* Pet. at 10-13. Petitioners' argument wholly ignores the *Franklin* Court's analysis of the availability of a damages remedy. The Eighth

Circuit properly rejected Petitioners' shallow interpretation of the *Franklin* case.

The *Franklin* case involved claims brought pursuant to Title IX of the Education Amendments of 1972 ("Title IX"). 503 U.S. at 62-63. As the Court recognized, there is an "implied right of action under Title IX." *Id.* The only question before the Court was "what remedies are available in a suit brought pursuant to this implied right." *Id.* at 66.

In determining that damages are available under Title IX, the Court interpreted the "long line of cases in which the Court has held that if a right of action exists to enforce a federal right *and* Congress is *silent on the question of remedies*, a federal court may order any appropriate relief." *Franklin*, 503 U.S. at 69 (emphasis added) (internal citations omitted). From its examination of those cases, the Court recognized the "general rule that all appropriate relief is available in an action brought to vindicate a federal right *when Congress has given no indication of its purpose with respect to remedies*." *Id.* at 68 (emphasis added) (internal citation omitted).

Unlike the "implied right of action under Title IX," Congress has specifically identified the remedies available to a plaintiff claiming a violation of the EEOA. *See* 20 U.S.C. §§ 1712 – 1718 ("Part 4 – Remedies"). In fact, as Representative Marvin Esch commented in introducing the EEOA to the House of Representatives, the EEOA was intended to "define... both denials of equal educational opportunities *and remedies available to overcome such denials*." Pet. App. 12a-13a (quoting 120 Cong. Rec. 8265 (1974)) (emphasis added). This purpose was codified at 20

U.S.C. §§ 1701(b) and 1702(b). Congress was not "silent on the question of remedies" when it drafted the EEOA. In fact, this Court has previously recognized that, in drafting the EEOA, Congress "simply legislated revised evidentiary standards *and remedial priorities to be employed by courts* in deciding such cases [against school districts or school boards]." *Monell v. Dep't of Social Servs. of City of New York*, 436 U.S. 658, 699 n.63 (1978) (emphasis added). Since Congress expressly provided remedies for violations of the EEOA, which do not include money damages, courts cannot presume that the legislature intended to make money damages available as a remedy. *See Franklin*, 503 U.S. at 66, 69. Similarly, the *Franklin* Court recognized the *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 147 (1985) decision as an example of a case in which it "rejected a claim for damages under a statute that expressly enumerated the remedies available to plaintiffs." *Franklin*, 503 U.S. at 69, n6.

Moreover, the EEOA contains detailed provisions regarding remedies. One section of the EEOA expressly limits courts to awarding "such remedies as are *essential to correct particular denials* of equal educational opportunity or equal protection of the laws." 20 U.S.C. § 1712 (emphasis added). A more specific provision of the EEOA mandates that:

> In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department, or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial

of the following remedies and shall require implementation of the first of the remedies set out below, or of the first combination thereof which would remedy such denial:

(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;

(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;

(d) the creation or revision of attendance zones or grade structures without requiring transportation beyond that described in section 1714 of this title;

(e) the construction of new schools or the closing of inferior schools;

(f) the construction or establishment of magnet schools; or

> (g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 1714 and 1715 of this title.

20 U.S.C. § 1713. Nothing in this provision authorizes the award of money damages. As this Court has recognized, "[w]here a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it." *Russell*, 473 U.S. at 147 (internal citation and quotation marks omitted). The Eighth Circuit held to this well-settled principle by declining to read the EEOA as including a remedy for money damages in light of its detailed remedial scheme. *See* Pet. App. at 16a-19a.

The Eighth Circuit's decision that the EEOA does not permit an award of money damages is also firmly grounded in the doctrines of statutory interpretation developed by this Court. The Eighth Circuit's routine application of these doctrines warrants no further review from the Court.

It is a "well-established principle that, in most contexts, a precisely drawn detailed statute pre-empts more general remedies." *Hinck v. United States*, 127 S.Ct. 2011, 2015 (2007) (internal citation and quotation marks omitted); *see also D. Ginsberg & Sons v. Popkin*, 285 U.S. 204, 208 (1932) (recognizing that specific provisions of a statute take precedence more general provisions of the same statute) (internal citations omitted), *Bloate v. United States*, 130 S.Ct. 1345, 1354 (2010) (same), *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 525 (1989) (same). The EEOA contains specific provisions addressing

available remedies. *See, generally,* 20 U.S.C. §§ 1712-1718. In fact, the EEOA contains a "precisely drawn" list of available remedies in order of priority. 20 U.S.C. § 1713. Therefore, the EEOA has preempted "more general remedies." *See Hinck*, 127 S.Ct. at 2015.

Moreover, as the Eighth Circuit recognized, the remedies available under the EEOA are limited to those that are "essential *to correct*" violations of the EEOA. Pet. App. 17a (quoting 20 U.S.C. § 1712) (emphasis in original). Courts award money damages to compensate a plaintiff for past wrongs, not "correct" any legal deficiency. *See* Pet. App. 17a. Therefore, even assuming *arguendo* that Congress did not intend to limit the EEOA remedies to those included in Section 1713, Section 1712 expressly precludes an award of money damages for violations of the EEOA.

Finally, it is a "fundamental cannon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989). The Eighth Circuit applied this doctrine, *see* Pet. App. 16a (citing *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988)), and concluded that the "language and structure of the EEOA indicate that the congressional purpose was to provide only equitable remedies for a violation of the statutory rights created by the statute." Pet. App. 17a.

The Eighth Circuit properly applied this Court's jurisprudence, including the *Franklin* decision, to determine that the EEOA does not authorize Petitioners to recover money damages. No further

review of this routine application of precedent would clarify any important question of federal law. Nor would further review resolve any conflict between the Eighth Circuit's decision and any decision of this Court, or any other court.

II. THE LOWER COURTS DID NOT DETERMINE THAT PETITIONERS WERE REQUIRED TO DEMONSTRATE DISCRIMINATORY INTENT IN ORDER TO MAINTAIN THEIR CLAIMS UNDER THE EEOA

Petitioners assert that the Eighth Circuit's decision conflicts with the Fifth Circuit case of *Castaneda v. Pickard*, 648 F.2d 989 (5th Cir. 1981). Pet. at 14-15, 18-19. Petitioners' argument is based on their belief that the Eighth Circuit concluded that they were required to demonstrate discriminatory intent in order to maintain their claim that the District violated the EEOA. *See* Pet. at 14-15.

Petitioners' perception of the Eighth Circuit's decision differs sharply with the reality of the lower courts' opinions in this matter. Neither the Eighth Circuit nor the District Court ever reached the question of whether a plaintiff needs to demonstrate discriminatory intent to assert a claim under the EEOA. Instead, the District Court concluded that Petitioners lacked standing to pursue their claims under the EEOA "because no remedy was available under the statute to redress their alleged injury." Pet. App. 11a (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 106 n.7, 129 & n.20 (1983) (Eighth Circuit); *see also* Pet. App. 43a (District Court). The Eighth Circuit agreed, finding neither injunctive relief nor monetary

damages were available to these plaintiffs. Pet. App. 12a.

This Court has recognized that it is "one of final review, not of first view." *F.C.C. v. Fox Television Stations, Inc.*, 129 S.Ct. 1800, 1819 (2009) (quoting *Cuter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)). Indeed, the Court ordinarily does not decide in the first instance issues not decided below. *Citizens United v. Fed. Election Comm'n*, 130 S.Ct. 876, 931 n.2 (2010); *see also Cutter, supra.*, *F. Hoffman-La Roche, Ltd. v. Empagran S.A.*, 542 U.S. 155, 175 (2004), *Michigan v. Lucas*, 500 U.S. 145, 150 (1991), and *United States v. Sperry Corp.*, 493 U.S. 52, 66 (1989). There is no reason why the Court should deviate from its usual practice in this matter.

Just last year, the Court considered the EEOA as it applies to ELL students, such as Petitioners. *See, generally, Horne v. Flores*, 129 S.Ct. 2579 (2009). In its *Horne* decision, the Court examined Section 1703(f), the very provision that forms the basis for Petitioners' claims in this matter. *Id.* at 2597. While the Court did not discuss intentional discrimination, the Court did note that the EEOA "leaves state and local educational authorities a substantial amount of latitude in choosing how this obligation [to take appropriate action to overcome language barriers] is met." *Id.* at 2597 (quoting *Castaneda*, 648 F.2d at 1009). As this Court has so recently provided guidance as to the interpretation of the EEOA, it is difficult to see why it should be called upon in this matter to

address a closely related point of law that neither lower court addressed in this matter.[4]

III. THE EIGHTH CIRCUIT'S INTERPRETATION OF TITLE VI DOES NOT WARRANT FURTHER REVIEW

Petitioners assert that the Eighth Circuit deviated from this Court's precedent by ruling that Petitioners were required to demonstrate discriminatory intent in order to maintain their claims under Title VI. *See, generally,* Pet. at 14-17. Petitioners' argument overlooks a significant provision in that holding and misinterprets this Court's past decisions. Despite Petitioners' obvious disagreement with the Eighth Circuit's decision, there is no conflict between its ruling and any decision of this Court.

A. Review of the Eighth Circuit's Interpretation of Title VI is Unnecessary in Light of the Eighth Circuit's Determination that Petitioners waived their *Johnson Controls* Argument by Failing to Raise it in the District Court

For the first time on appeal to the Eighth Circuit, Petitioners alleged that the District's policies regarding special education testing for students attending ALHS were facially discriminatory and, therefore, they did not need to demonstrate discriminatory intent to maintain their claims under Title VI. *See* Pet. at 9 (citing *UAW v. Johnson*

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[4] The District has never argued that Petitioners were required to demonstrate discriminatory intent under the EEOA.

Controls, 499 U.S. 187 (1991)); *see also* Pet. App. 9a. The Eighth Circuit noted that Petitioners had neither raised their facially discriminatory argument, nor cited *Johnson Controls*, in their "extensive" briefing to the District Court. Therefore, the Eighth Circuit held that it was "hard pressed t see why [this] contention is not waived." Pet. App. 9a (citing *Orr v. Wal-Mart Stores, Inc.*, 297 F.3d 720, 725 (8th Cir. 2002). Petitioners do not challenge, or even acknowledge, this holding. *See, generally,* Pet. at 15-17.

"It is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below." *Singleton v. Wulff*, 428 U.S. 106, 120 (1976). Indeed, the "matter of what questions may be taken up and resolved for the first time on appeal is one left primarily to the discretion of the courts of appeal, to be exercised on the facts of individual cases." *Id.* at 121. Exercising this discretion, the Eighth Circuit concluded that Petitioners had waived their argument that the District's policies were facially discriminatory. Pet. App. 9a.

Because the Eighth Circuit ultimately concluded that Petitioners waived their *Johnson Controls* argument, and because Petitioners have not challenged this aspect of the Eighth Circuit's decision, this Court's review of the merits of that argument would not affect the outcome of this case. Any such review would only result in an advisory opinion, the likes of which this Court has steadfastly refused to issue in the past. *See, e.g., Massachusetts v. Environmental Protection Agency*, 549 U.S. 497, 516 (2007) (recognizing that "no justiciable controversy exists when parties...ask for an advisory opinion...") (citing *Hayburn's Case*, 2 Dall. 409, 1 L.Ed. 436

(1792)); *see also Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 346 (1936), *Alabama v. Shelton*, 535 U.S. 654, 674-75 (2002) (Scalia, J., dissenting, joined by Rehnquist, C.J., Kennedy, J., and Thomas, J.).

B. The Eighth Circuit's Discussion of Title VI is Firmly Rooted in this Court's Jurisprudence

After concluding that it was "hard pressed to see why [Petitioners' *Johnson Controls* argument] is not waived," the Eighth Circuit went on to disagree with the merits of that argument. *See, generally,* Pet. App. 9a-11a. In this regard, Petitioners assert that the Eighth Circuit misapplied the *Johnson Controls* case. Pet. at 15-17.

Petitioners' argument completely overlooks the scope of the Court's *Johnson Controls* decision. The *Johnson Controls* case involved a challenge under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e ("Title VII") to a company "policy that all women who are pregnant or who are capable of bearing children will not be placed into [certain] jobs." 499 U.S. at 192. In finding that the policy violated Title VII, the Court noted that "[t]he bias in Johnson Controls' policy is obvious. Fertile men, but not fertile women, are given a choice as to whether they wish to risk their reproductive health for a particular job." *Id.* at 197. The Court then recognized that the "policy explicitly discriminates against women on the basis of their sex." *Id.* Finally, the Court held that the policy "is facially discriminatory because it requires only a female employee to produce proof that she is not capable of reproducing." *Id.* at 198.

Unlike the policy at issue in *Johnson Controls*, the District's policy does not "explicitly discriminate" against any person on the basis of any protected class. Instead, MDE held that that "the District did not evaluate ELL students until they have been in ELL for three years." Pet. App. 85a. As the Eighth Circuit observed, Title VI does not prohibit discrimination on the basis of English language proficiency. Therefore, a policy that expressly differentiates between students based on such proficiency, as opposed to national origin, does not "facially" violate Title VI. Pet. App. 10a (gathering law).

The District's unwritten policy in question is applicable to all "English Language Learner" students. *See* Pet. App. 85a. Petitioners, in addition to being foreign-born, are ELL students. *See* Pet. App. 26a (describing Petitioners' familiarity with the English Language); *see also* Pet. at 5-6 (discussing District policy of testing "ELL students" for special education). At no point in this case have Petitioners been able to demonstrate that the policies were applied to them because they were foreign-born, rather than because they were ELL students. *See* Pet. App. 39a-41a. In fact, eleven of the thirteen Petitioners were unable to establish that they suffered any harm as a result of the allegedly discriminatory policy. *Id.* at 40a.[5]

In light of their inability to demonstrate discriminatory intent, Petitioners assert that the fact that the District's policy, which is applicable to every

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[5] The Petition does not seek review of the Eighth Circuit's conclusion that eleven out of thirteen Petitioners "suffered no injury from the delayed testing." *See* Pet. App. 9a.

student in the District, was applied to foreign-born students enrolled at ALHS renders the policy "facially" discriminatory. Put another way, Petitioners assert that, because the District's policy had a disparate impact on students of certain national origins, they are relieved of their burden to prove discriminatory intent. Petitioners' argument obviates this Court's well-settled distinction between cases of "disparate impact" and those of "intentional discrimination." Petitioners blithely ignore this Court's past rulings that Title VI only prohibits intentional discrimination, and seek to distort the very framework used by this Court to determine whether intentional discrimination has occurred. The Eighth Circuit's rejection of Petitioners' arguments is firmly based in this Court's jurisprudence.

It is "beyond dispute" that Title VI "prohibits only intentional discrimination." *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001) (citing *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978)). As this Court has held, "cases of intentional discrimination [are those] that do not rely on the disparate impact theory of discrimination." *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 534 (1999). Petitioners' attempt to demonstrate intentional discrimination on the basis of an alleged disparate impact ignores this distinction and erodes the Court's holding that Title VI does not prohibit actions which have a disparate impact on individuals, but which are not intentionally discriminatory.

As discussed above, the *Johnson Controls* case involved a policy that, by its plain terms, applied only to "women who are pregnant or who are capable of bearing children." 499 U.S. at 192. Thus, by its plain terms, it was "facially" discriminatory. *See Id.* at 198.

Unlike the policy at issue in *Johnson Controls*, the District's testing policy was applicable to all ELL students, not only those of a foreign national origin. Pet. App. 85a. Therefore, the *Johnson Controls* decision is inapposite to the instant situation.

The District Court and the Eighth Circuit concluded that the District had a nondiscriminatory basis for the application of its testing policies; specifically, that it waited until Petitioners' had a better grasp of the English language before it tested them for special education needs. *See* Pet. App. 41a. As the lower courts noted, this is a legitimate, nondiscriminatory, educational reason for distinguishing Petitioners from other individuals. *Id.* Therefore, it entitled the District to summary judgment on Plaintiffs' Title VI claims. *Id.* (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973). Contrary to Petitioners' bald assertion, the District's policy was not a facially discriminatory policy like the one at issue in the *Johnson Controls* case.

Despite Petitioners' contentions, there is no conflict between the Eighth Circuit's decision in this matter and the Court's *Johnson Controls* case. Review of this decision would not settle any important point of federal law and is unnecessary in light of this Court's past guidance on the issues presented in the Petition.

IV. THE EIGHTH CIRCUIT'S INTERPRETATION OF TITLE VI DOES NOT OFFEND PUBLIC POLICY

In the final pages of their Petition, Petitioners assert that allowing the Eighth Circuit decision to

stand would result in the circuit-wide creation of a segregated school system. *See, generally,* Pet. at 17-19.[6] None of Petitioners' dire prognostications, however, would be averted by any ruling on the narrow legal issues presented in this case.

For instance, Petitioners have not asserted that the lack of a damages remedy under the EEOA will contribute to a segregated school system. Nor have Petitioners even attempted to link their assertion that "school choice itself promotes segregation-in-fact" to any legal argument raised at any stage of these proceedings. *See* Pet. at 18.

Similarly, Petitioners opine that "courts are in dire need of a rule to find disparate treatment where there are facially discriminatory policies at work." Pet. at 19. The Court outlined such a rule in its *Johnson Controls* case. However, despite Petitioners' assertion, no "facially discriminatory" policies are at work in this case. Petitioners' public policy, like Petitioners' legal argument, blurs the line between policies that have a disparate impact on certain individuals, and those that are intentionally discriminatory; a line that this Court has previously developed. *See, e.g., Kolstad, supra.*

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[6] While Petitioners allege numerous deficiencies with the education provided at ALHS, the lower courts recognized that, at most, "[Petitioners'] evidence suffices to create a jury question as to the appropriateness of [the District's] efforts to overcome [Petitioners'] language barriers." Pet. App. 43a (discussing EEOA claim); *see also* Pet. App. 33a, 35a (concluding that, at most, Petitioners' evidence supports a "disparate impact" claim under Title VI), and App. 5b (addressing the appropriateness of the programming at ALHS).

In fact, the Eighth Circuit's decision is amply supported by policy concerns that this Court has previously identified. In its *Flores* decision, the Court cautioned federal courts against substituting their "own educational and budgetary policy judgments for those of the state and local officials to whom such decisions are properly entrusted" when considering EEOA claims. 129 S.Ct. at 2597. With the exception of their claim related to special-education testing, Petitioners' numerous allegations concerning the educational programming provided at ALHS are simply no longer an issue in this lawsuit. The only question before the Court are those properly named in the Petition; namely whether the EEOA allows for Petitioners to maintain a suit for money damages or whether the Eighth Circuit erred in determining that Petitioners were required to prove discriminatory intent to maintain their Title VI claims.

As the Court has cautioned, "educational and budgetary policy judgments" are best left to school districts and State educational agencies. *Flores*, 129 S.Ct. at 2597. The MDE, Minnesota's educational agency, has already determined that the District has properly amended its practice (or unwritten policy) regarding special education testing and ELL students. App. 1b-2b. Therefore, there is no concern that future generations of students enrolled in the District will be exposed to the same policies that form the basis of Petitioners' initial lawsuit. This Court's intervention on the grounds that ALHS allegedly provided Petitioners a substandard education for other reasons would be directly contrary to the Court's direction in *Flores*.

Moreover, as the District Court recognized, "it would be extraordinary if Congress had authorized money damages under the EEOA given the potential for such awards to bankrupt school districts." Pet. App. 45a. Indeed, given that the EEOA pertains to every school district in the country, reaching such a conclusion would potentially imperil the precarious finances of school districts from Maine to California, not just those in the Eighth Circuit.

The Eighth Circuit's decision in this matter forwards public policy. Petitioners' public policy concerns cannot be redressed by a decision of this Court on any of the legal issues involved in this lawsuit. No further review of this mater would benefit any matter of public policy.

CONCLUSION

For the foregoing reasons, Respondent Special School District Number 1, Minneapolis Public Schools, respectfully requests that the Court deny the Petition.

Respectfully submitted,

RATWIK, ROSZAK & MALONEY, P.A.

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ATTORNEYS FOR RESPONDENT
SPECIAL SCHOOL DISTRICT NO. 1,
MINNEAPOLIS

Dated: December 29, 2010

APPENDIX

APPENDIX

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APPENDIX A

Minnesota Department of Education

April 4, 2007

Thandiwe Peebles
Minneapolis SSD # 001
807 NE Broadway
Minneapolis, MN 55413-2398

Ladan Bashir Yusuf
PO Box 14892
Minneapolis, MN 55414

Re: Complaint File # 2132

Dear Superintendent Peebles and Ms. Yusuf:

After reviewing the documentation provided by the District and receiving confirmation that the parent meetings were held, this letter verifies the District's completion of corrective action for the above referenced complaint. The complaint is hereby closed.

If you have any questions or concerns, please contact me by phone at 651.582.8844 or by e-mail at susanne.thomas@state.mn.us.

Sincerely,

/s/ Sue Thomas
Sue Thomas
Due Process Specialist
Division of Compliance and assistance

ST:JP

C Kim Mesun

1500 Highway 36 West, Roseville, MN 55113-4266
651-582-8200 TTY: 651-582-8201

education.state.mn.us

APPENDIX B

EXPERT WITNESS REPORT

for

Mumid et al. vs. Abraham Lincoln High School, et al.

Prepared by

Roberta Vann, Ph.D.
Professor, Iowa State University
and

Afra A. Hersi, Ph.D.
Assistant Professor, Loyola College, Maryland

August 1, 2001

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SECTION 1: REPORT OVERVIEW

We have been asked by counsel to review materials relating to the case of Mumid *et al.* vs. Abraham Lincoln High School (ALHS), *et al.* and to address the extent to which actions by the school were unfair to the plaintiffs, specifically the extent to which ALHS took appropriate action to overcome language barriers that impeded equal participation by English language learners (ELLs) in the school's academic programs. The evidence we reviewed shows ALHS to be a typical newcomer school with reasonable and appropriate practices. Staff were qualified and dedicated and the curriculum was sound. The school served students fairly in its practices and most students made reasonable progress. We saw no evidence that suggests staff intentionally discriminated against students.

Contributing to our judgments is current research. First, we summarize that research to provide a context for understanding the complex issues faced by schools and districts that serve adolescent English language learners (ELLs) who are non-literate and unschooled. This research, though somewhat sparse where this population is concerned, supports our opinion that:

1) **Not all English Language Learners are alike. Recent immigrants and refugees present school districts with unique challenges at a time of fiscal shortfalls and this calls for unique rather than formulaic solutions.**

2) **A variety of individual, home, and community factors contribute to both academic success and language learning**

success, many of which are beyond the school's control.

3) **Experts do not always agree on the best methods for teaching English. Bilingual education is not the only reasonable and sound choice for a school.**

4) **Newly mandated assessment requirements do an inadequate job of assessing ELLs, especially in terms of academic English needs. Relying too much on these instruments to measure ELL academic progress is a mistake.**

5) **Newcomer schools are one recent innovative solution to address the need for accelerated education in young adults with little or no prior schooling and limited English proficiency. These schools are in some ways still experimental.**

We next present our examination of evidence from ALHS, beginning with the staff and continuing with the curriculum and other programs, noting that:

AHLS is a typical newcomer school (Short and Boyson, 2004) that addresses the needs of the student population it serves.

a. Program features are similar to those of other newcomer schools.
b. AHLS staff are qualified and dedicated.
b. The majority of AHLS staff uses best practices.

c. AHLS curriculum is appropriate and reasonable in its:
    i. Approach and methods
    ii. Materials and techniques
d. AHLS support programs are appropriate.

Finally, we present our analysis and evaluation of the specific cases of the plaintiffs, referring to both student records and depositions. We summarize and conclude that:

1) **In general ALHS did a good job of working with students, teaching them, and supporting their needs to the extent reasonably possible.**

2) **Students appeared to have unrealistic expectations, little understanding of school and what a diploma represents.**

3) **A variety of factors contributed to the progress of students, many of these beyond the mission of the school.**

4) **Assessment and intervention for special education, based on the evidence we have seen, was not implemented perfectly for all parties; this is not surprising given the well-documented difficulty of disentangling special education needs from deficits in a student's schooling, language issues, and other factors effecting education. We see no evidence of ill-intent or discrimination on the part of staff.**

SECTION 2: DOCUMENTS REVIEWED

I. Licensing Documents Including:

A. Licensure and Other Permissions for Teaching during the 2005-2006 School Year
B. Memorandum from Minnesota Board of Teaching dated April 2005
C. Teaching Staff Licensure & Assignment dated November 26, 2002
D. Teacher Licenses dated June 15, 2005 -
E. ALHS Teachers Licensure Budget dated 2001-2003

II. Individual Plaintiff Information for Test Scores for Each Plaintiff Including:

A. Graphs of MBST Scores
B. Graphs of MBST Writing Scores
C. Graphs of MTEAE Writing Scores
D. Graphs of MTEAE Reading Scores
E. Charts with Documents Supporting Graphs
F. Documents supporting Charts and Graphs with MBST and MTEAE Scores

III. Handbooks, Manuals, Improvement Plans and Reports

A. ELL State Funding Packet dated October 5, 2001
B. Staff Handbook dated 2001
C. INA – Employee Manual Revised September 15, 2003

D. INA Employee Manual Revised May 2006
E. ALHS Course Offerings 2001 – 2002
F. ALHS Student Handbook 2003 – 2004
G. ALHS Course Offerings 2004 – 2005
H. LIHS Student/Family Handbook 2005 – 2006
I. ALHS School Improvement Plan 2004 – 2005 (submitted October 2004)
J. MPS School Improvement Plan Feedback for ALHS Spring 2000
K. School Improvement Plan 2003 – 2004
L. School Improvement Plan 2002-2003
M. ALHS Annual Report and School Improvement Plan 2001 – 2002
N. ALHS Annual Report 2002 – 2003
O. 2005 Annual Report for MLPS from ALHS 2005
P. ALHS School Information Report 2000 – 2001
Q. ALHS Information Report 2001 – 2002
R. ALHS Information Report 2002 – 2003
S. ALHS Information Report 2004 – 2005
T. ALHS Information Report D002157

IV. Staff Development Documents

A. MFAS Fall Workshop Schedule
B. All Staff Meeting Proposed Yearly Calendar & Activities
C. High School Counselor Conference 2001 Agenda
D. MAAP Conference Registration - Sandy Sample
E. Staff Development Memo

F. Email from Mohamed Wadi to Mary Barrie re participation in workshop March 5th

G. Mpls Public Schools Secondary Mathematics District-wide Staff Development Franklin Middle School Agenda

H. Upcoming Professional Development Opportunities for Teachers of Mathematics
Secondary Staff Development, Parent Conference, Grading, Flex and Standards Implementation Dates

I. Email from Katie Gagstetter to Nata Samb re Somali Language and Literacy Conference

J. Minneapolis Public Schools Community Academic Summit Notice

K. Staff Development Day Agenda

L. Email from Aly Xiong to Joel Gibson and Nata Samb re EFF Training

M. ALHS Staff Development Day Agenda

N. Email from Aly Xiong to district re 504 Training

O. Email from Nata Samb re All Staff Meeting April 19, 2005 re MCA training and presentation on special education

P. Email from Aly Xiong re Peer Observation

Q. Email from Nata Samb re Staff Development Agenda

R. Email from Stephanie re Monday Staff Development

S. Faculty Development Plan for Working with English Language Learners

T. Minneapolis Public Schools Curriculum and Instruction Memo re July Probability and Statistics Workshop at Macalester College

U. Email from Nata Samb to Joel Gibson re Court re Teaching Middle and Secondary Immigrant/Refugee Students

V. Email re District Literacy Training

W. Email re District Staff Development Day

X. Email re Staff Development Training

Y. All Staff Meeting Agenda

Z. Abraham Lincoln High School All Staff Meeting Agenda

AA. Staff Development 101 Workshop

BB. Email re staff meetings

CC. Email re Academic Planning - All Staff Training

DD. Academic Planning - All Staff Training/Staff Development Schedule

EE. Email re SIP Classroom Observations

FF. Email re Staff Development Team

GG. Staff Development Committee Notes

HH. Certificates of Participation of Education Minnesota Professional Conference - Nata Samb

II. Certificate of Participation Staff Development

JJ. Certificate of Participation Staff Development

KK. Certificates of Participation Staff Development

LL. Criteria for Spending Staff Development Funds

MM. Staff Development Additional Information

NN. Community Action Summit Workshop

OO. Working with English Language Learners: Second Language Acquisition and Making Instruction Accessible
PP. Working with Parents of English Language Learners
QQ. Gallinger Center for Effective Education Service Contract/Price List
RR. Chart summarizing teacher licenses and education

V. Deposition Transcripts of:

A. Individual Plaintiffs
B. Joel Gibson
C. Nata Samb
D. Mohamed Wadi
E. Mary Barrie
F. Linda Huntzicker

VI. Curriculum/Course Outlines for the following Subject Areas:

A. History
B. Science
C. English
D. ELL
E. Computers
F. Math

VII. Plaintiffs Expert Report

A. Report of expert witness, Dr. Martha Bigelow

VIII. Teachers at ALHS

A. Licensing Information
B. Resumes
C. Transcripts/Verified Credential Reports
D. Chart listing education and licensing information

IX. Timelines of Students

X. Additional Documents

A. Minn. Stat § 124D.68 Graduation Incentive Programs
B. Minn. Stat. § 120A.20 Admission to Public School
C. Minn. Stat. § 120B.024 Graduation Requirements; Course Credits
D. Minneapolis Public Schools ELL District Guidelines
E. Minneapolis Public Schools Policy 6280
F. Minnesota Department of Education K-12 Academic Standards, Required State Tests and Graduation Requirements
G. Correspondence regarding age requirements
H. Minneapolis Public Schools Graduation Requirements and MBST Exemption ELL students;
I. Summary of Survey results
J. School Information Reports 1999-2000, 2001-2002, 2002-2003, 2003-2004
K. MBST Summary
L. School Improvement Plans 2000, 2001-2002, (ABLHS Restructure Plan), 2004-2005, 2005-2006

M. ABLHS Annual Reports 2002-2003, 2005
N. Minnesota Department of Education Complaint and Closure letter

XI. Student Records

A. Intake Records
B. Attendance Records
C. Registration Form 13
D. Health/Immunization Records
E. Tutoring Records
F. E-Mail Correspondence from teachers specific to an individual Plaintiff

SECTION 3: RESEARCH

1. Not all English Language Learners are alike. Recent immigrants and refugees present school districts with unique challenges at a time of fiscal shortfalls and this calls for unique rather than formulaic solutions.

Different kinds of ELLs and no "one-size fits all" solution

The number of English language learners (ELLs) has increased dramatically in the U.S., nearly doubling between 1992-2002 and representing almost 8 times the rate of total student enrollment (Peregoy & Boyle, 2005). Not all ELLs are alike. Some are second or third generation children born in the U.S. Others are recent arrivals. Some are fluent in one language while others are multi-lingual (Batalova, Fix, & Murray, 2005; Suárez-Orozco & Suárez-Orozco, 2001). Some are from professional families; some come to the United States with their families as children and have many years to

learn English; others arrive as young adults. The ELLs facing the greatest challenges are immigrants and refugees from low socio-economic backgrounds who are below grade level, lacking even basic math and literacy in their first language (Ruiz-de-Velasco, & Fix, 2000). In addition to the poverty and educational gaps such individuals also face culture shock in adjusting to life in a new country. Those who are refugees and who fled from war and violence face additional psychological stress resulting from previous trauma.

These students need to adjust to a new culture, and often help support families while recovering from their own health and well-being, all the while making up for lost years of academic preparation before they reach the age when they are no longer allowed to remain in a traditional or even alternative free public school and must instead opt for an adult education alternative. These are needs that often cannot be met by traditional public schools.

Impact on Schools

School systems with only a few ELLs 10 years ago may now find 25% to 30% of their classrooms filled with a new diversity. While enriching our nation, this change in demographics presents great challenges for school systems economically[1] and pedagogically. These challenges have been accentuated by the demands of *No Child Left Behind Act of 2001* (NCLB) with its

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[1] There is disparity between school population and resources, with larger numbers of immigrants at the secondary level, but greater spending for elementary schools. Consequently a smaller proportion of secondary ELLs receive support services (Ruiz-de-Velasco & Fix, 2000).

mandated curriculum standards and standardized testing for all students. The NCLB places tremendous pressure, not always educationally productive, on schools, especially those whose students tend to score lower on standardized tests than their middle-class white peers, for which schools are penalized. Schools are thus struggling to adjust to a challenging new student population under new external pressures at a time when funding is short. Unfortunately, solutions for those challenges have been slow in coming. Theory and methods more abundant for younger, elementary school ELLs is still developing for older learners, especially those struggling with literacy (Brisk, 2000; Faltis, 2001). Likewise, appropriate means of assessment are still in need of development.

2. A variety of individual, home, and community factors contribute to both academic success and language learning success, many of which are beyond the school's mission.

Factors that contribute to the academic success of English Language Learners

Research on adult, language learners who are pre-literate has lagged behind other kinds of research on second language learning. For example, we know a great deal about college students learning ESL or foreign languages and much about elementary school students, but relatively little about the new language learners entering our schools, especially about how best to teach what is needed for advanced academic language proficiency.

What we do know is that: 1) Being an immigrant itself is associated with an increased risk of dropping out.

For example, the dropout rate of Hispanic immigrants is more than double that of native-born Hispanics (Short and Fitzsimmons, 2007). Many interdependent factors are associated with academic success for language learners. Characteristics of the individual learner as well as the home, school, and community in which he/she lives are influential. It is important to note, as Brisk, Burgos, and Hamerla (2004) point out, that factors related to academic success are interconnected.

Individual factors

Prior Schooling: Students who have disrupted schooling or no schooling at all are at increased risk for significant difficulties in school (Haines, 1985; Portes & Rumbaut, 2001). Little or no schooling is often typical of refugees who have fled long-term wars.

For example, though education is highly valued in Somali culture, twelve years of civil war disrupted the education of an entire generation of Somali children. While some had access to school in refugee camps, parents and family members often had to pay to send their children to school (Hersi, 2005).

Literacy: Literacy is intertwined with schooling and both are highly tied to school success, with formal schooling in one's native language being a strong predictor of second language achievement and success in school (Thomas and Collier, 2002). However, literacy knowledge comes from other sources besides formal schooling. This, includes the literacy practices provided by families and communities (Heath, 1983) such as reading to a child as well as modeling reading and writing in everyday life. It is important to note

that learning to read and write is in a sense, "unnatural" in that not all languages have a script and learning to read and write is not inevitably acquired. For example, Somali had no written form until 1972 when a Somali script was adopted based on the Roman alphabet. On the other hand, Somali culture has a rich tradition of oral literature, including poetry, narratives, and places a high value on articulate communication.

Age: The age at which the student begins school influences success. While adolescents and young adults can learn well, even the most motivated and intelligent student who arrives at age 17 having had little or no prior schooling will be hard-pressed to make up 12 years of school, while adjusting to a new culture, learning a new language, etc. What's more, such students need to learn in record time. As Short and Boyson (2004, p.3) discuss, "overage, under-schooled youth" are enrolling in public schools in record numbers and often fail to meet graduation requirements before they are forced to leave free public schools.

Health and biological disposition: Besides social factors, the physical condition of the learner also plays some role. As learners, we have strengths and weaknesses that are in part both biological and environmental. Siblings from the same family may differ in academic achievement as a result of cognitive differences, their diet, the hours of sleep they get, etc. A student who was nutritionally deprived or suffered trauma as a child may be adversely affected and unable to perform as well as is required for academic success (Call & Magnuson, 2005).

Motivation: Motivation has long been recognized as an important factor in learning; low motivation may manifest itself in poor school attendance or attentiveness to learning. While there are many reasons why a student may be more or less motivated to attend regularly and work hard in school, motivation is clearly associated with success in learning, including language learning (Ellis, 1994) and one outcome of motivation, attendance, is one measure of school quality. Of course whether or not a student has a high motivation to learn, attends school, and is attentive to learning is connected in part with other factors, including home and community and one's motivation for schooling may vary over time.

Home factors

Parental support: Parental support for education is another factor that has been associated with school success. Families support children's school success in many ways, encouraging their children to do well and making it a priority. Immigrant parents, like other parents, typically want their children to succeed in school (Delgado-Gaitan, 1990) and encourage them to do so. However, a non-literate parent struggling to adjust to a new culture who is working many hours each week will not be able to read to a child, a factor strongly associated with reading success, or interact in many ways that support learning, e.g. helping the son or daughter with homework, providing access to a computer, and incorporating literacy into family life via an abundance of books.

Socio-economic level: Part of what it means to support one's child's education is tied to one's socioeconomic level. Dependence on public

transportation, shortage of cash to pay for it, and families who may desperately need another working member typically mean less time for school work and related activities by the student. Not surprisingly, research finds that a family's socioeconomic status in their country of origin and in the United States is a key factor in predicting ELL student achievement in American schools (Ovando, Combs, & Collier, 2006) with those at lower *socioeconomic levels* having lower success rates, including lower graduation One study (Martin, et al. 2000) showed that families that had a high level of educational resources (more than a hundred books, a desk, a computer and one parent who had finished college) had higher achievement in science and math. Unfortunately, newcomers are at a greater risk of poverty than other groups (Waggoner, 1999) with the poverty rate among foreign-born immigrants tripling since 1970 (Ruiz de Valasco & Fix, 2000).

Community Factors

Attitudes and perceptions: *Attitudes and perceptions* toward certain ethnic groups in a community also influence school success; a positive perception of students' culture and language has been shown to have a positive effect on success in school, while the perception of discrimination has been associated with negative effects on academic success (Portes, 1999).

Role models: While middle class and upper class communities typically have many *role models for success,* lower socioeconomic students may have few or none, especially in mainstream schools where teachers are frequently white and middle-class. Schools that

have teachers and staff that reflect students' heritage culture and language are likely to provide such role models.

School-related factors

School and class size: For many years, educators and researchers have debated which school variables influence student achievement. As stakeholders, including government and the business community, become involved in school reform, this question takes on new importance since their many initiatives rely on presumed relationships between various education-related factors and learning outcomes. Some research has suggested, "schools bring little influence to bear upon a child's achievement that is independent of his background and general social context" (Coleman et al., 1966, p. 325; see also Jencks et al., 1972). Other research suggests that factors like class size (Glass et al., 1982; Mosteller, 1995), teacher qualifications (Ferguson, 1991), school size (Lee & Smith, 1997), and other school variables may play an important role in what students learn. For example, studies show that small schools have higher attendance rates, higher grade-point averages, lower dropout rates and improvements in academic performance (Lee & Smith, 1993). Similarly, research suggests that smaller classes improve academic performance for all children, particularly minority students from low socio-economic backgrounds (Glass et al., 1982; Molnar, Smith, & Zahorik, 1999).

Teacher Quality: Teacher quality consistently ranks as one of the top concerns for educators, researchers, politicians, and policymakers (Cochran-Smith, 2003). This is no doubt due in part to the shortage of well-

qualified teachers faced by virtually every state (Allen, 2003). It is also due to the growing body of evidence which suggests teacher quality enhances student learning (Cochran-Smith, 2004). However, exactly what constitutes an effective teacher is still hotly debated. On the one hand, researchers have argued that effective teachers are knowledgeable in their content area and in pedagogy, have teaching experience, and have been prepared through teacher education (Darling-Hammond, 2002). On the other hand, some experts argue that effective teachers only need to have high standardized test scores (e.g. on the Scholastic Aptitude Test (S.A.T.) and need only be knowledgeable in their subject-matter (Walsh, 2001; Kanstroom & Finn, 1999).

Many states, including Minnesota, are experiencing teacher shortages in critical areas including math, science, special education, and world languages (Teacher Quality Compensation: Program overview). One recent report listed foreign language, special education, vocational education, and ESL as being the most difficult areas to fill for 1999-2000. Shortages of teachers were disportionately high in urban areas, and in schools with higher minorities and more students on free and reduced lunches (Murphy, DeArmond, & Guin, 2003).

Time, content, support: Spending time on instruction, providing content instruction and providing students with support for academic learning are all associated with school success for ELLs. The Minneapolis district guidelines for ELLs emphasize adequate instructional time, including time spent on language development, content instruction and support for academic classes (District guidelines for

ELLs, p. 100) as factors that contribute to school success.

Language issues

The extent to which learners know the language of instruction, especially as it is used in academic situations, the greater their likelihood of success (Delpit, 1995; Health, 1983; Wong-Fillmore, 1982; Scarcella, 2002). Because language learning is so important for school success, we discuss it in more detail below.

Factors that contribute specifically to language learning success

The basics: Exposure to the language, opportunity to interact, and a safe environment

First language acquisition: Virtually all human beings acquire at least one language, their mother tongue, and worldwide, most human beings are multilingual. Generally speaking, a second language, *if one wishes only everyday conversational competence,* can be acquired in much the same way as one's native language. What is required is sufficient *exposure* and sufficient *opportunity to interact in the target language,* that is, the language one wishes to learn, in an *environment in which the learner feels safe.*

Second language acquisition: Unlike first language acquisition, which occurs universally and takes relatively the same length of time for most children around the world, second language learning and the learning of literacy varies a great deal. Many linguistic, individual, social and cultural differences

that learners bring to a language learning situation influence the likelihood of their success in mastering literacy skills and the English proficiency needed for academic success. These include time on task, age, and differences between the learner's heritage language and the language he/she is learning and one's prior experience learning languages.

Academic Language Proficiency: The extent to which learners know the language of instruction, especially as it is used in academic situations, the greater their likelihood of success (Delpit, 1995; Heath, 1983; Wong-Fillmore, 1982; Scarcella, 2002). The English language skills students need to participate effectively in school, so-called *academic English*, are considerably more complex than is ordinarily assumed. Indeed, many of the academic subjects taught in secondary schools will be out of reach if students lack fairly high levels of English. Academic language is increasingly being recognized as a barrier that must be addressed for learners to succeed (Bailey, 2007).

Time on task: Years needed to acquire academic language proficiency in English

The length of time one spends being exposed to the target language and studying it is one of the most important factors in language learning. According to research, 4-8 years are needed for a learner to reach the level of English needed for academic success. Cummins (1984) distinguishes between basic interpersonal communication skills, which learners typically acquire much sooner, often in as little as 6 months. An example is a hallway or cafeteria interchange between peers. Cummins contrasts this

the more abstract language of academic work, found in textbooks and much classroom discussion, which takes longer to acquire and is strongly tied to academic success. In recent years a number of methodological approaches have developed out of this recognition.[2]

Age

Age plays a role in learning a second language. Around puberty, certain aspects of language, namely the extent to which one can acquire a new language and speak it with a native-like accent, are sharply reduced for all but a few rare learners. On the other hand, some aspects of second language learning may be enhanced for older learners, at least for literate and linguistically aware adults. For example, an adult who reads in his/her native language will potentially have advantages over a preliterate child or adult in being able to use texts to learn about the target culture and language, take notes to add memory, etc. These factors are especially important for learning academic language learning.

Older learners also seem to have advantages in acquiring the grammar and the vocabulary of the language as well. Adolescents and adults have world knowledge they can bring to benefit their own language learning. However, much of the research on second language acquisition comes from studies of fairly well educated adults who are literate in their

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[2] One of the best known is the Cognitive Academic Language Learning Approach (CALLA) developed by Chamot and O'Malley (1994) and Chamot, (2005) which suggests that actively learning strategies can play a great role in academic language learning.

native languages and who are learning in formal settings, often in universities. We have far less research on the language learning of preliterate adults.

For many adolescent and adult learners, gaining the opportunities for language interaction is more difficult than it is for children, because of the pressures of work and family obligations and the difficulty of entering new linguistic communities, especially for someone who is introverted and/or whose heritage culture and language is not viewed favorably. Older learners who find or seek out opportunities to interact in the target language typically meet with greater success.

Heritage and target language and cultural similarities

Similarities between the heritage language of the student and the school language can be a factor in learning a language and thus ultimately affect school success. Generally speaking, speakers of languages that are closer to the target language will learn those languages more quickly.[3]

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[3] For example, a speaker of Dutch will typically learn English more quickly than a speaker of Chinese or Arabic under the same conditions will learn English because Dutch has more possibilities for positive transfer to English than do the latter languages, including grammatical features and loan words recognizable by speakers of both languages. Rather extensive research at the Foreign Service Institute has provided us insight into these differences, so while linguists would argue that no language is really innately easier than another, some second languages will be easier for some learners because of their first language background. For example, students who are speakers of Somali and Oromo will face greater linguistic differences between their

For example, among language teachers, Arabic speakers are generally known to acquire spoken English more easily and to speak more like a native-speaker than, for example many Chinese, but Arabic-speakers typically have greater difficulty with written language skills than do Chinese-speaking who are studying English.[4]

Other factors

No two learners are exactly alike. In addition to the factors discussed above, a variety of other factors affect the second language learning of adolescents and adults. These include *motivation, general intelligence, language aptitude,* and the use of *positive learning strategies* as well as *attitudes* of the learner toward the

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native languages than will Spanish speakers learning English. Likewise, learners who lack written literacy in their first language will find increased challenges in learning to read and write English.

[4] This tends to manifest itself on the standardized Test of English as a Foreign Language (TOEFL) with Arabic speakers scoring higher in listening comprehension than in Grammar and Reading. One likely reason probably has to do with the different roles that oral and written language plays in the respective cultures and the relative value some societies place on one over the other. To illustrate: A graduate student one of us knew from Sudan once shared that she had to "fight" to do homework because her parents found it odd that she would want to go to her room and study instead of talking with family and friends. A Japanese student who was part of the same conversation, was shocked at the parental attitude of her classmate's parents; her own parents made homework mandatory as soon as she walked in the door. This illustrates how family values support certain preferences for using language, e.g. speaking and listening vs. reading and writing.

target language and culture and of the majority language community toward the language of the learner (Ellis, 1994). Learners vary in the accuracy of their pronunciation, in their abilities to comprehend spoken discourse, in their fluency, in the extent of their vocabularies, their reading speed and comprehension, and their writing fluency and grammatical knowledge. The factors we have presented suggest some of the key reasons for this variability.

3. Experts do not agree on the best methods for teaching English. Bilingual education is not the only reasonable and sound choice for a school.

Current approaches and favored methods of teaching English to newcomers

"Natural" approaches vs. grammar-based approaches

There are many curricular approaches and methods suitable, but often hotly debated, for teaching English as a second language, especially where adult learners are concerned. Basically, these might be best understood as three continua. The first continuum is one with "natural," interactive, and communicative approaches at one end and formal, grammar-based approaches on the other.

Theories of Language Learning	
Natural	**Formal**

Theorists who support natural approaches emphasize the *similarity* of first and second language learning.

For these theorists, learning a second language mirrors how we learn our mother tongues (Krashen, 1982). At the other end of the continuum are approaches that focus more on formal language learning involving written texts and grammatical awareness (Schleppegrell & Columbi, 2002; Hinkel, 2004). Approaches at this end tend to appeal to those who emphasize the *differences* in first and second language learning. While some learners are more comfortable with the more easy-going approach of the "natural" approach, many experts now see this as deficient in providing the kind of structured training that prepares students for the academic language they need for school success. One authority on academic writing, Eli Hinkel, suggests a disconnect between the teaching methods and the evaluation criteria used in writing instruction for ELLs with ". . . the essential linguistic skills, such as academic vocabulary and formal features of grammar and text" rarely or inconsistently addressed (Hinkel, 2004, 6). In reality, most teachers in classrooms we have visited use a combination of methods, utilizing both communicative techniques and some attention to recognizing grammatical form.

English immersion vs. bilingual models

A second continuum presents a focus on the target language, in this case, English, versus a focus on preserving the heritage language via some form of bilingual instruction. Examples range from classes taught exclusively in English with total immersion (in reality submersion programs) to two-way bilingualism at the other end.

Approaches to Language Teaching

Total Immersion **Bilingual**

An example of total immersion would be simply enrolling a student in a mainstream school with no language support of any kind. An example of a two-way bilingual program, of which there are many permutations, would be a school in which subjects are taught on some days or by some teachers in the heritage language, e.g. French in Quebec, and on days or by other teachers, in the second language, e.g. English.

Ellis (1994) in summarizing the research on immersion classrooms points out that there is general agreement that immersion programs are "very effective" (p. 226). Three key features are important: 1) language that is comprehensible to students, 2) learner's identity is not threatened, 3) immersion programs are optional.

In reality there are many versions of "immersion" and "bilingual" education and many forms of target language support.[5] These range from the traditional

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[5] An "immersion" or direct method model could on one extreme be a school that forbade any language but the target language, including written materials in the home language. This method has been used by Peace Corps and the US Army in an attempt to speed up learning of foreign languages and notoriously with Native Americans in an attempt to wipe out their home cultures. A more acceptable version of immersion today is one in which students receive most instruction in English, but with considerable assistance from bilingual aides, bilingual dictionaries, peer tutors, computer-assisted programs, and other support and in which academic English is specifically taught. In such settings the heritage language is valued and while students

"pull-out" ESL classes in which students are immersed in mainstream classes for a portion of the day and pulled out into ESL classes for the remainder of the day, to "push-in" models in which ESL teachers team up with mainstream teachers to support ELLs in their content classes. Another variation near the middle of the immersion-bilingual continuum involves mainstream classes that incorporate bilingual teachers and/or individual bilingual aides. A popular model often referred to as "sheltered" instruction teaches content classes in English, but utilizes techniques to make the content more accessible by providing English support and in some cases simplification as well as guidance in learning strategies to foster both language and content learning.

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are encouraged to interact in the target language, they are never punished for speaking their home language. Such a model is practical in a setting where several heritage languages are represented and where it is not economically possible or feasible to find sufficient qualified bilingual instructors in all languages represented. For example, in the Des Moines School District, which has some 70 languages represented it is difficult to apply a bilingual model, which might be well-suited for El Paso or Miami, or even West Liberty, Iowa. Even when bilingual instruction is not feasible, teachers can and do use a variety of techniques to encourage the preservation of heritage languages.

4. Newly mandated assessment requirements do an inadequate job of assessing ELLs, especially regarding academic English needs. Relying too much on these instruments to measure ELL academic progress is a mistake.

Issues related to Measuring Individual Student Progress

Student inexperience with standardized tests

Traditionally, U.S. schools have measured student achievement with individual grades and, to some extent, standardized tests. A half century ago, today's baby boomers took tests such as the Iowa Test of Basic Skills (ITBS); because of their familiarity and widespread use, to most of us, these pencil-and-paper computer-scored tests seem straightforward. Yet for much of the world, standardized multiple-choice tests are uncommon. NCLB requires all students, with some exceptions, to meet specific standards of achievement by taking standardized tests approved by the federal government and to show adequate yearly progress in math, reading, and, most recently, science. Consequently, standardized tests have become increasingly important and used across populations that would previously have "been exempt, e.g. ELLs. Most of these students arrive not only with no standardized test-taking experience, but also still lack basic literacy and even skills we assume in mainstream pre-kindergarten children, e.g. being able to hold a pencil, recognize basic shapes, etc.[6]

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[6] At Iowa State University, we regularly encounter near native-speakers of English who fail the computer-scored listening

Inadequacies of tests

Testing ELLs for English proficiency and content learning is creating other major research and policy issues in the nation's school districts. According to Bailey (2007) whose important edited book, *The Language Demands of School: Putting Academic English to the Test* published by Yale University Press earlier this year, suggests that we lack:

> " ... comprehensive information about what language demands are placed on school-age children in general and how much English language learners can realistically be expected to learn and how quickly. While we have a large literature base about English as a second language (ESL), this research base cannot answer these questions with sufficient specificity to aid policy makers and educators faced with the creation of English language development tests and curricula" (p.2-3).

Bailey subsequently details a key problem relevant to the case at hand: As educators struggle to "implement approaches to help ensure both quality instruction and valid and reliable assessments of all" (p.3), ELLs, who because they often enter school without the English language skills needed to benefit from the mainstream

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comprehension section of our English Placement Test. When we do follow-up interviews, we find that these students, who are typically from Africa, and in some cases have spoken English for most of their lives, tell us that they are simply not accustomed to taking such tests. Thus we find that instead of measuring English comprehension, for certain populations, we are instead measuring test-taking aptitude.

curriculum, are now obliged to take standardized tests, urgently being developed. Current tests fail to measure school language and we lack longitudinal data showing student growth over time. "Collectively, these prove a serious challenge to accurate and useful prediction of language and academic outcomes" (Bailey, p. 4). The main point here is that we are not always using tests that are appropriate for ELLs.

Solutions for the problems of assessing individual adolescent students who are acquiring both English and academic literacy are outlined in the recent report to the Carnegie Corporation (Short and Fitzsimmons, 2007) and include increasing funding to develop tools that appropriately assess the literacy skills of adolescent ELLs.

Test accommodations

Accommodations are widely used in testing ELLs who have not yet mastered English sufficient to handle a particular content test. Accommodations consist of modifications made to the test and/or the test procedure. Typical accommodations include translating a test, or writing it in simple English, allowing the test taker extra time, allowing an interpreter, or allowing the use of a dictionary, etc. Bailey (2007) points out that the problem is that not accommodating to the student's language level may result in our not really measuring what we want to measure, e.g. rather than measuring the student's ability to do particular math problems as we set out to do, we end up measuring his/her language proficiency. On the other hand, using accommodations may show that a student is ready for a mainstream content class when he/she lacks the particular content-specific

language to function successfully in that environment, in this case the language of math. Bailey and Butler (2004) suggest the need to:

- Do a better job teaching students the required academic English rather than place so much emphasis on accommodation

- Devise academic English language proficiency assessments that really help us know whether a student is ready for the language that is required in, for example, a mainstream math class.

Issues Related to Assessing Schools

Just as it can be problematic to apply tests designed for one population to another, it can also be challenging to measure the achievement of all schools using the same measures. For example, *alternative schools,* which serve students identified as being at a higher risk of dropping out, are currently being measured by the same criteria as other schools. Minnesota state lawmakers have recognized this problem. According to a recent article in the *Minneapolis Star Tribune,* State Rep. Carlos Mariani-Rosa, chairman of the House E-12 Education Committee, is planning to work with fellow legislators on better ways to assess alternative schools. According to Mariani-Rosa, "To a large degree, you're looking at a different group of students." (p. 1). A bill introduced this year by State Representative David Bly to provide alternative ways to measure success at alternative schools "went nowhere." (p. 2), despite the pressure, according to president-elect of the Minnesota Association of Alternative Programs (MAAP), Terry

Lydell, to push ". . . the Legislature and the Education Department to come up with better measures of academic success—or alternative education programs." (p.1) According to Lydell, the state needs to go beyond mere graduation rates and test scores when judging alternative programs.

5. Newcomer schools are one recent innovative solution to address the need for accelerated education in young adults with little or no prior schooling and limited English proficiency. These schools are in some ways still experimental.

The arrival of newcomer schools

One of the assumptions of mainstream ESL and bilingual programs is that learners:

- Have literacy skills
- Are acculturated to school learning (Short and Boyson, 2004).

With the arrival of many students who did not fit this category, newcomer schools were created in 30 states to specifically address the needs of these learners. A newcomer school is:

> A program that in a special academic environment for a limited period of time, educates recent immigrant students who have no or very limited English proficiency and who may have limited formal education in their native countries. (Short and Boyson, 2004, p.8)

An evolving process

An ideal newcomer school is "an evolving process" (Short and Boyson, 2004, p. 148) with room for original design to evolve as populations shift and new state and local priorities emerge. Model newcomer programs in which much success is achieved are *flexible* and go beyond the grade-level curricula to create specialized courses to develop students' literacy needs and fill gaps in their prior education (Short & Boyson, 2007).

National study of newcomer schools

In 1996, the National Center for Research on Education, Diversity, & Excellence (CREDE) funded researchers at the Center for Applied Linguistics (CAL) to conduct a four-year study of such programs which was designed to 1) study and document newcomer programs, and 2) document a few programs carefully, looking specifically at their effectiveness for ELLs. *Abraham Lincoln High School in Minneapolis participated in this study and is included in the appendix along with 114 similar programs across the nation.*

Most newcomer programs are found in urban areas (76%) with more than half serving high school students. Table 1 shows other key characteristics of newcomer programs. Nearly half of the programs have class size between 10-19 students and about half offer ESL with smaller percentages offering bilingual and native-language literacy support. Virtually all newcomer schools offer content instruction, the vast majority doing so via sheltered instruction; likewise, nearly all programs offer cross-cultural orientation to the U.S.

Survey of Newcomer Programs, N=115 (2000)

Characteristics	Percentage of Programs
Class Size	
10 -19	49%
20 - 24	25%
24 - 35	22%
Types of language programs[7]	
ESL Program	50%
Bilingual	7%
Native Language	2%
Combination of ESL, BL, NL	41%
Type of Instruction	
ESL or ELD Courses	100%
Native language Literacy	42%
Content Instruction (1 or more areas)	97%
via Sheltered Instruction (SI)	89%
via Native Language Instruction (NLI)	55%
via both SI and NLI	46%
Cross-Cultural/ Orientation to the U.S.	81%

Table 1. Adopted and modified from Short and Boyson (2004)

[7] Type of program offered to newcomers depends on students' native languages and availability of bilingual teachers, paraprofessionals, and instructional materials.

Other typical characteristics include:

- **Smaller classes**
- **"Hand-picked" faculty involved in school governance**
- **Close connections among students, families, and their communities**
- **Field trips and cultural orientation**
- **Specially developed curricula**

Certain beliefs underlie many newcomer programs, including specific attention to certain needs of the population.

- **Meeting literacy needs**
- **Creating a welcoming and nurturing environment which makes the new environment of school feel safe and comfortable**
- **Filling gaps in education and accelerating learning to gain core components**
- **Fostering success through connections between school, family, and community.**

Newcomer schools have been criticized for segregating students from the main student body, but this criticism has been addressed by pointing out that such students are typically ostracized linguistically and culturally in a mainstream school, especially during their first 6 months to a year. One corrective is to provide extracurricular opportunities for interaction with non-newcomer students (Short & Boyson, 2004).

SECTION 3: ABRAHAM LINCOLN SCHOOL

AHLS is a typical newcomer school that addresses the needs of the student population it serves.

a. **Program features are similar to those of other newcomer schools**
b. **AHLS staff are qualified and dedicated**
c. **The majority of AHLS staff uses best practices.**
d. **AHLS curriculum is appropriate and reasonable in terms of its**
    I. Approach and methods
    ii. Materials and techniques
e. **AHLS support-programs are appropriate**

Description of the School

ALHS, currently located at 730 Hennepin Avenue, Minneapolis, Minnesota, was founded in 1996 as a contract alternative high school for newcomers in the Minneapolis Public School system. From its inception, ALHS has served immigrant students ages 14 to 21 (or until age 23 in some circumstances). The school provides a curriculum in history, math, science, literature, social studies, computer technology, as well as intensive instruction in English language.

Specific population

Country of Origin

The school population varies demographically each year. For fall 2005, the annual report lists students from 6 countries in Africa with the largest share (N=109) from Somalia and Ethiopia (N=30) and the remaining 9 from 4 West African countries for a total of 148 Africans. That same semester ALHS had 41 students from Ecuador, 30 from Mexico, and the remaining 4 from Uruguay, Guatemala, and the US. One student was from Vietnam.

The total student population for that semester appears to be somewhere between 324 (p.9 and 233 (p 10).

Length of time in School System

Seventy-two percent of the ALHS students have been in the Minneapolis Public School (MPS) system from between 0 and 2 years and 23% from 2-5 years, and 3% 5-7 years. Only 2% of ALHS students have been in the system for more than 7 years.

Gender Ratio

A higher proportion of ALHS students are male (56% in 2005) than in the district or state where the distribution is close to 50% for each gender.

Eligibility for free and reduced meals

About 96% of the students were eligible for free or reduced meals. (p. 12), compared with 68% for the Minneapolis district and less than 30% for the state.

Limited English Proficient

The school is almost entirely LEP, 90% in 2003, 85% in 2004, and 80% in 2005 (p. 14), compared with 23% for Minneapolis district and 7% for the state for 2004-2005.

Graduation Rate

According to MPS statistics as reported in the ALHS annual report for fall 2005, ALHS had an 18% graduation rate for the 2004-05 academic year. Sixty-two students walked in the ceremony with 4 not passing MBST despite having sufficient credits; 4 needed to complete credits. Fourteen of those who graduated attended ALHS for 4 years and 2 for more than 4 years. About half of the students went on to attend a 2 or 4-year college. Several received scholarships for further education.

Mission

The school's 2005 annual report to the district states the following mission:

> Lincoln International High School seeks to provide an ethnically diverse English immersion environment of knowledge, recognition, and healing for refugees, immigrants, and other disadvantaged students. (ALHS 20005 Annual Report, p. 1; Plaintiff's exhibit 139)

Goals

The same school report states the following goals:

- To be a premier alternative school offering comprehensive educational programs for immigrants and refugees.
- To help students understand their new community (Twin Cities and the USA) and better comprehend the cultural differences between the US and the country in which they grew up.
- To develop an interdisciplinary curriculum designed to meet student's individual needs and to respect the remarkable diversity of the school's students and staff.
- To help students become self-directed, cooperative learners who are directly involved in their educational destiny and in their future roles in this nation.
- To inspire students to reach academic goals including the completion of all credits for a high school diploma and passing all required Minnesota tests.
- To provide supplemental tutoring to assist students to progress in second language development, academic basic skills, and all studies. (ALHS 2005 Annual Report, p. 1; Plaintiff's exhibit 139).

Methods of Instruction

The school is self-described as English *immersion*. In second language immersion programs students are at ". . . similar levels of proficiency in their new language and generally receive input tailored to their needs"

(Richard-Amato, 1996, p. 300). It is clear that classes use a *sheltered-English* model, which is a kind of immersion (Richard-Amato, 1996) in which content in academic classes is modified in order to be accessible to students. Curricular materials reveal a fairly traditional ESL program in which attention is paid to *academic English,* that is, to the special language recognized by research as being needed for academic achievement. The program emphasizes literacy skills. Content classes emphasize academic vocabulary, which is appropriate and a key aspect of sheltered English. Without visiting classes it is impossible to know to what extent students are actively engaged in the content. However, we noted evidence of the following:

- Utilizing learners' own cultural knowledge
- Providing opportunities for group work
- Encouraging learners to take responsibility for their own learning
- Incorporating community contacts and knowledge of community
- Employing a variety of activities
- Using varied materials
- Using computer-assisted instruction[8]

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[8] We saw evidence that computer technology is a central part of the curriculum and this is an important and often neglected in ELL instruction. The School Improvement Application (p. 6, item 6) reports that ". . . technology is a central learning tool" with 3 computer labs with approximately 80 computers, which provides a high ratio of computers to students (approximately 1:3). Syllabi also show evidence of special courses which instruct students in using the computer for academic purposes, an extremely valuable part of any secondary school curriculum today. Instructors also appear to make regular use of computer labs.

Standardized formal assessments used at ALHS

Students attending ALHS typically take several standardized tests described here.

TEAE

The Test of Emerging Academic English (TEAE) has two sections: reading and writing. According to the *Minneapolis Public Schools English Learning District Guidelines,* the reading test uses a multiple-choice format. Each section follows thematically from the previous section, becoming progressively more difficult. Students are encouraged to keep working on the test they arrive at section that is too difficult. The writing test has two sections, one with a picture prompt and the other with test prompt. Any positive change in a student's scale score is considered growth in their reading language proficiency.

MN-SOLOM

An ELL teacher compiles the Minnesota Student Oral Language Observation Matrix (MN-SOLOM); passing score is determined by combining listening and speaking scores.

MBST

The Minnesota Basic Skills Tests (MBST) has three tests in reading, math, and writing components (Ex 312). The test is used as a graduation and accountability measure, meaning that all ELLs must be included in the assessment, with graduation exceptions for LEP students with less than three years of attendance in an English speaking school. The

passing score for reading and math scaled score is 600 (Ex 312, p. 127), and for the writing, the passing score is a 3 (based on holistic sore ranging from 1 to 4).

Other kinds of assessments of student progress

We found evidence of varied informal and on-going assessment important in a setting such as ALHS. Examples include portfolios of student work in upper level English courses, which supplemented more typical quizzes, projects, and tests. Examples of emails between teachers provide evidence of impromptu team meetings to discuss particular concerns about student progress beyond concerns addressed at regular staff meetings.

Qualifications of Teaching Staff

Degrees, Licensure, and Teaching Experience

According to the School Staff Characteristics reported by the Minnesota Department of Education and included in the 2005 ALHS report, most of the teachers at ALHS are well qualified.

Licensure: Using a chart listing 32 teachers employed at ALHS from 2001-2005, we found evidence that all of those listed were either licensed or had a state-approved exemption.[9] In addition to all teachers

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[9] It is important to note that teachers may also bring special talents or skills to a school that should be recognized as valuable, especially if they are appropriate and useful in that particular school context. This would include skills in areas relevant for extracurricular activities such as drama or sports, fluency in a second or third language, skill in teaching using technology, and

having at least Bachelor's degrees, many also had appropriate Masters' degrees.

Cultural and linguistic expertise

Language proficiency: According to the School Improvement Plan for 2005-2006 (p. 6, item 8,) teaching staff represent 13 countries and speak 27 different languages.

Teaching evaluations: Though dated surveys with high response rates or evaluations of teaching from students or peers would be optimal, a survey apparently conducted in the school in 2004-2005 provides some sense of the teaching climate at ALHS. Of staff responding:

- 100% liked working at the school (p.3).
- 100% felt they knew most of their students personally (p. 2).
- 93% felt that staff in the school worked well together (p.3).
- 100% believed they were making an important contribution in the lives of their students (p.3).

In the same survey: 97% of the students said they were proud to be at the school (p.3).

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relevant cultural experiences. Though we agree that the majority of the staff should be licensed in the area in which they are teaching, in some cases, the administration may decide that need and a candidate's otherwise outstanding credentials may outweigh the need for a license.

Teaching observations. Staff developments materials, (D000718) a memo dated November 2005 from Linda Huntzicker indicates that three observations of teachers were planned during the semester, one by core curriculum team leaders, one by Nata Samba, and one by Linda Huntzicker. Appropriately, the SIOP checklist was being used.

On-going professional development: We found a variety of evidence that ALHS staff participated in relevant professional development. Topics included: Sheltered Instruction Observation Protocol (SIOP) training, literacy in mathematics institutes, working with parents of English language learners, and assessment and lesson planning for ELL students. While it would be optimal to have had a more cohesive, on-going professional development program, this is a challenge in many districts because of a lack of federally funded and state support for on-going teacher-quality education.

Curriculum

We judge an exemplary curriculum to be one that makes use of current professional knowledge, utilizes appropriate materials that both engage and challenge students, and includes evidence of adapting to changing student needs. We also look for clarity, careful planning, and clear objectives in line with state standards.

ESL / English / Language Arts

For our review we examined the ALHS English department textbook list, course descriptions, goal statements, proficiency levels, and 20 syllabi from nine

different teachers. The English program has 5 levels ranging from beginner to advanced. The stated goals are appropriate and aligned with state standards.

1) To use English to communicate in social settings
2) To use English to achieve academically in all content areas
3) To use English in socially and culturally appropriate ways in multicultural and diverse settings.

The curriculum itself is grammar-based and integrates speaking, listening, reading, and writing as well as specific support for the language of mathematics. Materials, for the most part, are current and widely respected in the field and from well-regarded publishers such as Oxford and Longman. Techniques apparent on syllabi vary quite a lot among teachers. These include very traditional, but well regarded practices such as dictations, especially in the level 9 classes. However, in one level 9 class and most upper level classes, teachers use innovative attempts to both engage students and provide very appropriate academically oriented materials with attention to academic literacy. Age-appropriate techniques include music, poetry, and art; graphic representation strategies, strategies to enhance vocabulary acquisition and uses of community resources, including field trips to the Guthrie and the Minneapolis Art Institute to create focused assignments, and collaboration with a class at St. Thomas which culminated in a presentation on fables to this audience by Abraham Lincoln students. Well-regarded practices such as dialogue journaling and a process-approach to writing are evident and widespread as is attention to

varied student learning styles. A few syllabi (3 teachers) were not in line with department stated goals and seemed old-fashioned in their presentation of grammar out of a meaningful context, a practice that has fallen out of favor and is not in line with the stated goals of the program. Four teachers had exemplary syllabi: well planned, creative, and appropriate. Three other teachers had syllabi we would characterize as average.

Mathematics

For our review we examined the ALHS math department textbook list, course descriptions, goal statement, proficiency levels; and 14 syllabi from three different teachers. The math program has 3 levels ranging from basic math to college prep/advanced. The stated goal is appropriate:

- Challenge each student with level of math most appropriate to the ability of the student

Aligned to state standards: The samples of the curriculum we examined suggest that ALHS has a math curriculum that is aligned to state and national standards for mathematic education. The math textbooks in the department are supplemented by online resource math software. Test preparation materials are also included.

Differentiated: ALHS has a math curriculum that provided three different levels of course offerings (basic, intermediate and advanced). Based on an individual's background in mathematics, or pre-assessment results, a student is placed in one of the three course sequences (see AL0003895 for description

of sequences). The syllabi indicate that students can move between levels, advancing from a basic to a higher math level sequence once they demonstrate success (grades C or better and teacher recommendations). Given the ELL student population, offering multiple entry points in the math curriculum is a sound differentiation of the curriculum and is consistent with research recommended educational practice for all students (Darling-Hammond, French, Garcia-Lopez, 2002; Gutstein, 2003; Short & Boyson, 2004; Zalvasky, 1996).

Adapted to student needs: ALHS math curriculum appears to be adapted to students needs. Courses appear designed to engage student in learning by providing opportunities for group and individual work; connections to real-world applications of math problems; and using technology (calculators, computer software, web-based math resource) and manipulatives. Moreover, some course syllabi addressed the academic language in mathematics by explicitly teaching math vocabulary; another sample syllabus appeared to integrate ESL Performance Indicators for listening, speaking, and writing.

Social Studies

For our review we examined the ALHS social studies department textbook list, course descriptions, goal statements, proficiency levels, and 13 syllabi from four different teachers. The social studies program has three year-long courses (civics, world studies, and U.S. history) and a number of electives (life skills to economics). The stated goals are appropriate:

- To develop well informed global citizens who demonstrate critical thinking skills.
- To give students the skills they need to thrive in the modem world.

The curriculum itself was linked to district and state social studies standards for social studies.

Rigorous, culturally relevant, and differentiated: ALHS has a rigorous, culturally relevant, and differentiated social studies curriculum that provides courses including life skills, civics, world studies, U.S. history, American government, economics, and electives (AL0003509). In 2003-2004 and 2004-2005, ALHS aligned its social studies curriculum to the district and state standards. The textbooks used in the department are current and well known in the field (e.g. *World Cultures: A Global Mosaic),* supplemented by multi-media (educational videos; music) and other resources. Courses such as life skills and social studies skills provide a needed introduction to American culture and society. Moreover, the social studies curriculum is culturally relevant, stressing attention to the history of Africa, Latin America and Middle East and global issues immigrant students might find more relevant (social justice; impact of urbanization and spread of poverty; historical roots of the Middle East conflict (AL0009745)). Social studies syllabi include attention to the importance of understanding culture; changing societies, and the connections between students' backgrounds to their study of history, culture, society, and governments.

Adapted to student needs: ALHS social studies curriculum appears to be adapted to students needs. Courses appear designed to engage student in learning

by providing culturally relevant content (history and issues of the world and in the U.S.), opportunities for group and individual inquiry projects; connections to real-world issues and topics; and opportunities to use technology. It is worth noting that ELLs who come from different parts and perspectives of the world can contribute their background knowledge and experiences to enrich any social studies curriculum. The course syllabi appear to take advantage of this richness by providing connections and relevance in the content.

Science

For our review we examined the science department textbook list, course descriptions, goal statements, proficiency levels, and 6 syllabi (chemistry, physics, biology, health education) from 4 different teachers. Based on our review of the science department's course offerings and syllabi, we conclude that ALHS offers a satisfactory curriculum that was linked to state and district standards.

ALHS has a science curriculum with course options ranging from general science to Physics (see AL_E0017047 for description of courses). The range of courses suggests individuals have varied choices for meeting the science requirements for graduation, a sound strategy for a diverse population.

Aligned to state standards: ALHS has a science curriculum that appears to be aligned to district and state standards for science education. Course descriptions stated the scientific conceptions, skills and knowledge to be addressed within the course (e.g.

scientific method; investigating and analyzing atomic theory; cell, their structures and functions).

Adapted to student needs: ALHS science curriculum appears to be adapted to student needs. Courses appear designed to engage student in learning by providing at least some opportunities for group and individual projects as well as demonstrations and experiments with manipulatives (e.g. M & M to demonstrate isotope rations). Although one science syllabus identifies the content vocabulary in biology (AL0004016-AL004031), other course syllabi are not as explicit. However, one should not conclude specific content vocabulary development was not in the science classrooms in ALHS, given that content instruction in science relies heavily on vocabulary specific to the field (cell, distance, velocity, etc.) and ideally is developed through hands-on activities and multiple encounters with vocabulary.

Support Programs

Tutoring Program

According to a description in the 2003-2004 Student Handbook, the multi-faceted tutoring program is directed by Chris Nevin, a former Peace Corps volunteer with experience teaching English in Africa and Central Europe. Tutoring is offered during and after school for any student who wants additional academic help. In addition, teachers can refer students for specialized help. Each semester about 40 volunteers are trained and work with approximately 100 students.

Community Partner Program

Directed by the Director of Community and Family Involvement and three cultural advisors (Spanish, Somali, and Oromo), this program is described as promoting learning through "community partnerships," including

- Enhancing relations with parents
- A tutoring/mentoring program

It also includes specific community-driven programs of which the following are examples:

- St. Thomas University Program (N=70, Fall 2003; N=90, Fall 2004, and N=100+, Fall 2005) where students from ALHS work with St. Thomas students on "creative projects."
- Children's Theatre Company Project (N=8; Fall 2005)
- Breck School peer tutoring
- America Reads Program, University of Minnesota tutoring program. This federally funded national program is designed to assist students in need, both tutors and tutees, and includes Spanish, Somali, and Oromo-speaking tutors.

Such peer tutoring programs are important in avoiding cultural isolation for ALHS students and providing positive peer role models in addition to individualized attention. Peer tutoring programs have strong professional support and are widespread in the U.S. The best programs provide training for tutors and utilize students who are enthusiastic and knowledgeable. In the case of ALHS both peer tutors

and college and community contacts are utilized. Such connections, particularly with area colleges and universities are mutually beneficial. Likewise, extracurricular programs such as the Children's Theatre Company project, offer valuable opportunities for students to interact with members of the community outside the school and utilize English in creative and enjoyable ways.

Bilingual Assistance

Though ALHS does not offer bilingual education, it does provide opportunities for students to interact and receive assistance in their native languages. This is available from the three sources: 1) cultural advisors, 2) teachers; many of whom are multi-lingual, and 3) peer tutors. It is important to note that the Minneapolis School District offers several schools that do utilize bilingual approaches, thus providing students and parents with options.

Summary of ALHS features that align with "typical" newcomer schools

- Smaller school
- Smaller classes
- Attention to building safe environment
- Diverse staff with linguistic and cultural knowledge
- Literacy focus
- Content made accessible via modified delivery and student support
- Tutoring services
- Community orientation and outreach
- Program evolving

SECTION 5: THE PLAINTIFFS

Plaintiffs were provided reasonable support for academic success

Individual Plaintiffs

Overview

The plaintiffs in general show remarkable achievement against considerable odds: Before arriving in the US in their mid to late teens, in addition to having little or no knowledge of English, most either lacked or had major gaps in schooling and had no literacy in their mother tongues. These students had a formidable task: Do 12-14 years of academic catch-up with mainstream Minnesotans before reaching 21, when they would be "overage" and ineligible for a free public high school education. In many cases the challenge of language learning and academic catch-up were combined with difficult home lives, including low socio-economic status, separation from immediate family members, and the loss of parents through death, disappearance or divorce. Many of the students had suffered other kinds of trauma and violence and lived in unstable and unhealthy environments in refugee camps for years. Families with low socio-economic levels and low levels of literacy themselves cannot provide the interactions which we know foster language development, e.g. parents who expose their children to texts, read to them, etc. Rather than such support, many of the plaintiffs themselves needed to support their families financially while in school. Despite these deficits and hardships, plaintiff depositions indicate that the plaintiffs expected to be well educated and get high

school diplomas in only 2 to 4 years from their enrollment. Rather than the fast-track progress we heard students say they expected in their depositions, most students made steady improvement characteristic of late adolescent and adult language learners who are new to literacy. Not surprisingly, plaintiffs became frustrated.

The Role of the School

Was the educational program at ALHS reasonably designed to provide its ELL students with access to the curriculum? The facts show a school with a curriculum like that of many schools we have visited, including syllabi that indicate in some cases, exemplary practices and in other cases classes that were at least adequate. Evidence shows dedicated faculty and Staff who worked to meet the diverse needs of their students. On one hand, ALHS was not as innovative as some of the premier newcomer schools and literacy programs in the country. For example, learners from oral cultures tend to benefit from inductive, communicative approaches and all learners benefit from being able to choose methods of teaching that match their learning styles. While the intensive grammatical approach used by ALHS has worked for many learners as a way to gain proficiency academic English, it is not the only way to acquire proficiency in English.

Most of the students, including the plaintiffs, liked many aspects of ALHS, choosing it over other school options, and citing the comfort of being with other members of their community provided as well as especially effective teachers; however, several plaintiffs also complained that they could not get the

help they needed, and especially that they had to wait inconveniently long for tutors. A few of the plaintiffs had other criticisms, in one case, that the food was not good and that the teachers treated students badly, but even this student had favorite teachers. Criticisms from students about school practices is, in our experience, not unusual.

Special education in ELLs is notoriously difficult to diagnose and scholarship to assist teachers is only recently being published. At times; the ELL population has been oversampled as "special education" when language and cultural issues were really the issue. Of course, interventions to enhance learning are appropriate and essential for virtually all learners and while the school lacked systematic documentation of interventions, staff at ALHS show evidence of a collaborative, team-based approach to assisting students and devising appropriate interventions. This approach shows evidence of enhancement and formalization under the guidance of Linda Huntzicker.

1. **Ibrahim Mumid**, born in Ethiopia in 1981, is a native-speaker of Oromo. Mr. Mumid reports that his father disappeared and that his "disappearance was because of the Ethiopian government" (depo 9). After his father's disappearance, Mr. Mumid's brother took him to a refugee camp in Nairobi, Kenya, where lived for four or five years (depo 9-13). Mr. Mumid came to the U.S. with his brothers and sisters and he lived with them for one year and four months before he moved out and got an apartment by himself (depo 18). He reports having had no schooling in Ethiopia and in the refugee camp, was unable to do basic math (adding, subtraction, etc), and did not have any knowledge or understanding of science before coming

to ALHS (depo 15, 16). He attended ALHS from 1999 to 2004 and during that period his MPLS records shows problematic attendance (Ex 42-58). Mr. Mumid worked 15 to 40 hours a week during his time at ALHS (depo 57,58). On his first two attempts at MTEAE reading and writing (Fall 2001 and Fall 2002) showed little to no progress (Reading 160 and 145; Writing 0 on both attempts). By 2003, Mr. Mumid began to show progress, the MTEAE reading increasing from 145 to 175, and writing scoring jumping from 0 to 4 (Ex 0019-0021). His MBST/MCA records show similar incremental progress, in 2003, he scored 491 and in 2004, 508, still below the passing score of 600, but progress nonetheless. Mr. Mumid, who sometimes did not wear his hearing aides to school, received extra support from his teachers and extra tutoring, however his chronic absences and disruptive behavior in class possibly limited the benefits he might have received from this extra support. Although Mr. Mumid reports his siblings had gone to school, there were no indications that he had family support while he lived with his siblings and after he moved out (depo 18; 55; 56). In his deposition, Mr. Mumid reported that he faced eviction, when asked if he had friends or family to live with, he indicated "nothing I know of". In addition, Mr. Mumid reported having had difficulty with hearing as a small child, and did not receive a hearing aid until he started school in the U.S. (depo 23; Ex 0181). His health records indicate that he had corrective surgery in right ear in 2001 and continues to need a hearing aid (Ex 0184; 0205; 0206). Mr. Mumid was not able to meet the graduation requirements and at the age 23, he became over-the age for compulsory education in 2004. Mr. Mumid complained that he did not get the help he needed from ALHS.

Conclusion: Given that Mr. Mumid began school for the first time at the age of 18, was not literate in his native language, worked 15-40 hours a week, had poor attendance while at ALHS, and had little or no support from his family, it is not surprising that he failed to attain a high school diploma during his five years at ALHS. Similar to many LEP students with limited or no formal schooling, these factors alone represent significant challenges to Mr. Mumid's academic achievement. Yet, Mr. Mumid was also hearing impaired (depo 23) and he reported having difficulties hearing his teachers, a fact collaborated by his teachers (Ex 0185; 0186; 0187) and his medical records (Ex 0184; 0204; 0206). The school staff assisted Mr. Mumid in receiving medical attention for his hearing loss. In November, 2001 one of his teachers reported that he might have a learning disability, not uncommon for students who have not had early intervention for hearing loss. The school probably should have referred Mr. Mumid for screening for his hearing prior to 2001.

2. Fadumo Muse, born in Somalia, is a native speaker of Somali. Ms. Muse reported that she and her family (father, mother and siblings) fled violence in Somalia and lived in the "slums" of Nairobi, Kenya for 14 or 15 years (depo, 9). With the sponsorship of her sister, Ms. Muse and her family moved to the U.S. in the fall of 2000. She reports having had no schooling in Somalia or in Kenya, and was unable to do basic math (adding, subtraction, etc), and did not have any knowledge or understanding of science (depo 11-12). In January of 2001, Ms. Muse reported that her sister enrolled her in Roosevelt High School (depo 18-19). During the following year (2001) she transferred to ALHS because "it was near [her] residence," thus

making it easier for her to help her mother after school (depo 24-25). Although Ms. Muse indicated that she did not work while she was enrolled at ALHS, she reported having responsibilities at home (depo 18). She explained: "I was helping my mother a lot, so I would go to classes after I help her out" (depo 18-19). Ms. Muse attended ALHS from the age of 16 to 19 (2001-2004), and during that time period married (9/2003), had a miscarriage (10/2003), and had her first child (7/2004) (depo 14, 45-56,59). With the exception of missed five days after her wedding and the 15 days following her she had a miscarriage, her attendance at ALHS was good (depo 58-59). Her assessment records indicate progress, with her TEAE reading starting at 159 and writing at 1 in 2001, and by the following year her (2002) progressing to 172 and in writing to 12 (Ex. 0252; Ex. 0255). In 2003, her TEAE reading showed a slight decline, while her writing increased again. Prior to 2003, Ms. Muse was exempt for the MBST/MCA as an LEP new to schooling When she learned it would take more time for her to meet the graduation requirement, she withdrew from the school.

Conclusion: The facts show that Ms. Muse began school with many deficits and that many factors in Ms. Muse's background were not conducive to success in language learning or academic achievement. In spite of this, she was making progress as indicated in her TEAE. As is typical with LEP students with limited formal educational backgrounds, her transcript indicates introductory courses (basic math, ESL, science, etc), and courses towards graduation. Given that Ms. Muse began school for the first time at the age of 15 and was not literate in her native language, it was unrealistic to expect she would complete in 3

and ½, years, the knowledge and skills required for a high school diploma. She needed more time to achieve.

3. Fahmo Ahmed, a native speaker of Somali, was born in Somalia on 1982. When the civil war broke out in Somali in 1991, she and her family (mother, father, brothers and sisters) moved to a refugee camp in Kenya (depo 8-9): Ms. Ahmed lived in refugee camp for 8 years before she and her family moved to the United States in 1999 (depo 9). While in Kenya and in Somalia, Ms. Ahmed reported having had no schooling, and was unable to do basic math (adding, subtraction, etc), and had no knowledge or understanding of science (depo 10-11). At the age of 17, Ms. Ahmed reported that her family enrolled her at Roosevelt High School (depo 15), where she remained for one year (11/1999-5/2001) (depo-289-30). During her time at Roosevelt, Ms. Ahmed married and became pregnant with her first child. In February 2002, five months into the academic year, Ms. Ahmed enrolled at ALHS. She attended ALHS from the age of 20 to 22, (2/2002-8/2004), and during that time had good attendance (Ex.0313). Her assessment records indicate progress, with her MTEAE reading starting at 170 and writing at 1 in fall 2002, and by the following year her (2003) TEAE Reading progressed to 184 and Writing to 3 (Ex. 0321). Similar incremental progress is evident in her MBST scores. Her MBST math score progressed to 550 by the summer of 2004. She did not pass the MBST requirement to receive a high school diploma, although Ms. Ahmed "walked" during 2004 graduation ceremonies (depo 44-56). After having her second child, Ms. Ahmed began attended the Franklin Learning Center, an adult education school.

Conclusion: Given that Ms. Ahmed began formal schooling at the age of 17, was not literate in her native language, did not have any knowledge or understanding of science (depo 11-12), it is not surprising that she struggled to pass the MBST during her two years at ALHS. While Ms. Ahmed was a young mother eager to complete her education, it is unrealistic to expect such rapid gains.

4. Safiya Mohamed, a native speaker of Somali, was born in Somalia on 1982. At the age of seven or eight, she and her family (mother, father, brothers and sisters) moved to a refugee camp in Kenya (depo 8-9). Ms. Mohamed lived in Kenyan refugee camps for 8 years before she and her family moved to the United States in February, 2000 (Ex 0417; depo 9-10). Ms. Mohamed reported having had attended "Gahayer Elementary School" in Somalia (Ex 0417) and studying language, math, and history before leaving due to civil war (depo 10-13). When she was 17, she enrolled at Washburn High school (9/2000) which she attended for two months; six months later she enrolled at Arlington High School (9/2001 to 11/2001). At the age of 19, she enrolled at ALHS (1/2002 to 8/2004). Despite her frequent moves between schools, Ms. Mohamed's assessment records indicate some progress, with her TEAE Reading starting at 2001 at level 1 and progressing to Level 2 by 2004. She did not progress as well in her TEAE writing; her scaled score increase from 12 in 2001 to 15 in 2003, or Level 1 (Ex. 0446). Her MBST records indicate progress in both reading and math. Although Ms. Mohamed accrued enough credits to graduate (Ex 2072), she did not pass the MBST and was not issued a diploma by the district (depo 32). She complained that the school did not tell

her about the MBST requirements and did not serve her needs.

Conclusion: Given Ms. Mohamed's history of interrupted education, age, LEP status, and multiple transfers between schools, her MBST and MTEAE progress indicate reasonable progress. Similar to students in her situation, she showed unrealistic expectations about the speed at which she could acquire a high school diploma.

5. Iftu Jibril, a native-speaker of Oromo, was born in Ethiopia in 1983. She reported being beaten (Depo 11-12) and witnessing violence (Depo 10-13) before moving to a refugee camp in Kenya where she lived for 2 years (Depo 9-10). She reported having had no schooling in Ethiopia and being non-literate and unable to do basic math before coming to ALHS which she attended between the ages of 16-21. For about 4 years during that time she lived with her sister (who could not read or write English) and her sister's family (about 10 people).(Ex 0612, p 17), later living with a friend and then living alone. She had outstanding attendance despite working significant hours (10.5 hours per week during 2001-2004) (Depo 58-61). Her test scores show improvement in English as measured by the TEAE Reading level I in fall 2001 and level 2 in fall 2003; in writing she moved from level 1 to 3. Her writing score on the MBST likewise moved from a level 1 in 2002 to a level 2 in 2004, but her scores in reading and writing on the MBST dropped. Though she received 101 credits and had a 2.6 GPA she did not graduate. From March 2005-March 2006, she attended Adult Options in Education classes (Ex 0510) where she was placed into beginning ESL and eventually reached high intermediate before she left without

explanation. She complained that she did not get the help she needed to learn.

Conclusion: Five years was not sufficient for this student to achieve the proficiency in academic English and the content knowledge she needed to make up for the many years of lost education and other factors working against school success.

6. Maymuna Muktar Osman, a native-speaker of Oromo, is an Ethiopian, born in 1981. She immigrated to the U.S. at age 20 (Depo 11) after spending 3 years living in a Nairobi slum in Kenya (Depo 60). She reported never having attended school before her arrival in the U.S. and was non-literate in her mother tongue (Ex0783, p8). Because of her age, she was assigned to adult education and attended Lehmann Center for ABE and the ESL program from October 2001 to March 2002, but wanted to attend high school and subsequently enrolled in ALHS, which she attended from March 2002 to January 2006, from age 20 to 25. In addition, she worked approximately 15-20 hours doing maintenance work from April 2005 to January 2006 while enrolled at ALHS (Ex. 0632). Upon arrival she showed recognition of the alphabet and could count to 10 in English, but scored 0 on basic math skills and on the TEAE in Fall 2002 and also scored very low on reading (52) and writing (4). A year later she had made great gains in those scores (reading, 144 and writing 15). She received regular tutoring 4-5 hours weekly Spring 2004, Fall 2004 and Fall 2005 (Ex. 0662) where she was described as "determined" and "hard working," making "good, but slow progress with developing her English skills." A classroom intervention worksheet dated 2/18/05 (Ex. 0670), notes that she had a B in pre-algebra and had

"improved a lot since last year" in math. An intervention sheet for English done on March 17, 2005 notes "very low English skills" and "currently doing D work (65%) in an adult diploma program." (Ex. 0671). Both intervention worksheets note recent poor attendance. By 2004, in spite of a D in Pre-Algebra (Ex 0728), she scored 74% on the MBST Practice Test I and 85% on Test 2. In April 2005, she took the MBST, but was exempted from passing due to LEP status (Ex. 0752). The student reported being told she was overage and would need to leave ALHS, but continued to attend and reported graduating in 2006 (Ex.0793, Depo, p. 42). Her transcript (Ex. 0716) shows 60 credits with a GPA just under 2.0. She graduated in January 2006 and began attending Adult Basic Education at the Franklin Learning Center in February 2006.

Conclusion: The facts point to a student who had much working against the success she expected, that is, a high school diploma in 2 or 3 years, This would be a great achievement even for a student with considerable schooling in his/her first language. Her initial gains in achievement as measured by test scores suggests that she was making good progress, and her subsequent slower progress seemed to be the cause for teachers initiating the problem solving method in Spring 2005. Some interventions were attempted, but there is no evidence that they resulted in improvement.

7. Mishah Ibrahim, a native speaker of Oromo, is an Ethiopian, born in 1983. He reports being literate in Oromo (Ex. 1885, p. 6) and studying English at the Dire Dawa Comprehensive Secondary School. When he vias 15 or 16 he fled the political strife in Ethiopia,

Where his father had been taken away and his two brothers killed (E1886, p. 11) (Ex 1885, p.8) and resettled in Kenya. At 17 or 18 he left Kenya for the US. He attended Champlin Park High School from November 2001 to June 2002 where he took classes taught in English with no support in his native language (ex.1887, p. 14). Subsequently, he transferred to ALHS and began working at the airport 40 hours weekly, beginning at noon and ending at 9 p.m. He believed that he could graduate in about a year and half (ex. 1889, p.21). Though he did not pass MBST Math or Reading, he made steady progress, advancing from 39% to 65% correct on the Math test (Ex. 0805) and from 30% to 53% on Reading. (Ex 0806) After leaving ALHS, he again took on full-time work in order to meet family obligations, including sending money to his mother and cousins in Ethiopia (Ex. 1892, p 36). Mr. Ibrahim has been diagnosed with rheumatic heart disease (Ex. 1892, p. 35-36).

Conclusion: The facts support Mr. Ibrahim as having had a background not conducive to success in language learning or academic achievement. His stress-filled life had major gaps in his education and major financial strains, which at times meant he was working full-time work while in school. Combined with health issues, this would have seemed to have left little opportunity for the extended learning recommended for adult newcomers. Considering these circumstances his progress as measured by MBST is admirable.

8. Amal Mohamed, born in 1984, is a native speaker of Somali who spent 10 years in Kenya before immigrating to the US when she was 14. She was enrolled at ALHS from February 2000-June 2005 with a brief interruption during which time she transferred

to Roosevelt. She entered the school with a score of 5/60 on basic math and level 2 English. A memo from tutoring supervisor, "Mr. Chris," (Ex. 0947, p. 348) on 5/05 indicated Ms. Mohamed had strong speaking skills and a good attitude, but was "below average in reading and writing." TEAE scores show virtually no change between 2001 and 2004. Documents indicate work with tutors during the 2004-2005 academic year, which was " . . . challenged by poor attendance on the part of the student" (Ex. 0949, p.350), though, she tended to focus when present and sometimes chose to read alone during tutoring sessions. She took the MBST in February 2005 and received a 519 in Math and a 504 in Reading; she did not take the Writing test A report from a teacher (Ex 1095) indicates a lack of effort and interest in learning on the part of the student and "more interest in socializing than learning." Others note trouble reading and "working independently" and "staying focused." (Ex 1107) She received a Section 504 Individual Accommodation Plan in June 2005 indicating "post-traumatic stress" (Ex. 1092).

Conclusion: This student had many challenges, including a trauma-filled childhood, the challenges of poverty, etc. that are not conducive to academic success. In spite of this and to her credit and the school's, she graduated. Her interest in socializing, her strong oral skills, and difficulty working independently suggests why she might find a traditional classroom frustrating. This was recognized by at least some instructors who tried to assist by allowing her to work in groups, reminding her to focus, etc. This student had needs that seemed to be addressed, to the extent possible, by the school.

9. Shamsa Ali Mohamed was born in 1981 in Somalia. A native speaker of Somali, she spent 12 years in a Kenyan refugee camp (Deposition 12-13) before immigrating to the U.S. when she was 17. She indicated that she had had no schooling, was non-literate and had no basic math skills when she entered the U.S. (Ex 1222, p. 14). Placing into Level 1 (no English) on initial placement tests, she attended ALHS between January 2000 and February 2003, between the ages of 18-21. A grade report from 2000-01 (trimester 1) (Ex 1184) includes comments on poor attendance and trimester 4 of that academic year shows all § and at least one instructor indicates Ms. Mohamed is not attending; she earned no credits for that semester. In contrast, during trimester 1 of 2001-2002, she earned all Cs with 3 teachers commenting on her hard work. However, in subsequent trimesters performance deteriorated with teachers again indicating incomplete assignments and poor attendance (Ex. 1200). After ALHS she attended the Lehman Center from 11/05-3/06, reentering in 12/06, but attending only one day.

Conclusion: Given the extremely low level of schooling with which Ms. Mohamed started, the strains of her family life (a one-parent family with 6 children in the US and another brother left behind in Kenya) (Ex. 1224) and the gaps in her attendance at ALHS, it is not surprising that she failed to attain a high school diploma in such a short time. These factors were made worse by poor attendance; indeed we see evidence that Ms. Mohamed did well when her attendance was good. Facts point to ALHS doing an admirable job of supporting this student's needs. Ms. Mohamed reported that her math teacher at ALHS provided help when she sought it (Ex 1226, p. 31, line

31), and after going to Roosevelt for a week, Ms. Mohamed decided ALHS was better and returned. Ms. Mohamed seemed to have unrealistic expectations about the speed at which language learning and academic learning can be accomplished and her periodic poor attendance did not enhance the likelihood of her success.

10. Yurub Siyad, a native-speaker of Somali, was born in 1983 in Mogadishu, Somalia. She and her family fled to Kenya to escape the civil war. She had had no schooling prior to coming to the US in 1999 at the age of 16. She first attended school in Milwaukee before enrolling in ALHS in October 2002 at the age of 19 where she remained until the age of 22 (2005). In March 2005 several teachers informally assessed her as having a reading level of grade 1. In spite of being "eager and very motivated to learn" Ms. Siyad struggled with at least some aspects of academic life. Her test scores do not show a clear pattern, with MBST in math remaining almost flat from 2003 to 2005, and reading showing both gains and losses. Nevertheless, tutors, with whom she worked from 2 to 7 hours weekly during the 2004-05 school year, noted that her math skills were " . . . developing much faster than her English reading skills" (Ex 1370). However, her writing scores show major gains between 2002 and 2004 (4.5-15) and in February 2005 she received a 547 on the MBST in reading. In March 2005, she had a B in pre-algebra and a memo from her teacher notes her ability to stay focused and complete assignments and her enjoyment and ability in math, a class she subsequently stopped attending and dropped (Ex 1381) according to a memo from June 2005. A memo that same spring 2005 noted that she had completed her

credits and was not exempt from the MBST, but that the school would assist in applying for a 504 plan.

Conclusion: The 504 alleviated the need for Ms. Siyad to pass the MBST. Evidence shows she received some interventions from teachers and significant amounts of tutoring. In short, ALHS made attempts to address Ms. Siyad's academic learning issues.

11. Muna Mohamed, a native-speaker of Somali, was born in 1981. She witnessed violence during the civil war, fled Somalia with her family, and lived in a Kenyan refugee camp between 1996-99 (Depo 12) She attended first grade in Somalia (Interrog.1; Interrog. 16), contradicted in Depo p.14) where she says she was taught only informally and that both parents were literate in Somali. After immigrating to US in January 1999, she attended high school briefly in Arizona (Depo 17) and then joined her cousin's family in Minneapolis where she attended Armstrong High School from March through September, 1999, then Roosevelt High School from October 1999 to January 2000. She dropped out to work and then attended ALHS between 6/27/01 and 8/29/04, initially scoring 2 out of 60 on the basic math placement test taken 6/25/01. We see in school records evidence of Ms. Mohamed mostly positive attitude, good attendance, and good grades and steady growth on the TEAE and MBST with a score in Reading on July 2004 of 576 (63 %) only a few years after entering with only basic English skills. Indeed the last time she took the MBST, she passed in Math (602 (76%)) and was very close to passing in Reading, remarkable considering that her total schooling was approximately 6 years and disrupted at that. Not surprising, her writing skills were still not up to the level Minnesotans expect of 12th graders, but

writing skills often lag behind for mainstream students for a variety of reasons (with 74% of Minnesotan 10th graders scoring only at the "basic composition level," one level higher than Ms. Mohamed). Apparently this student "walked" at graduation at age 19 and due to reasons unclear to us, she did not remain at ALHS for the 2 additional years to which she is legally entitled. She is currently employed as a shoe sales person working on commission in addition to her hourly salary.

Conclusion: Given the brevity of and major gaps in her schooling both prior to coming to the U.S. and after immigration, Ms. Mohamed has done remarkably well. Given her progress to date, it is probable that she could have graduated, had she remained in school. There is evidence that ALHS staff performed well in helping this student move from basic to fairly high levels of academic competence. Though she would have liked more help than she said she received, she spoke positively of several teachers and the tutoring coordinator and of the efforts leachers took to help.

12. Amina Harun, a native-speaker of Somali, was born in 1983 and attended school in a refugee camp in Kenya, where her family fled to escape the civil war in Somalia. She reports being literate in Somali with some literacy in English and having parents literate in Somali when she arrived in the U.S. at the age of 19. However, her initial tests upon arrival show only basic literacy and low math skills. She had good attendance and made good grades (GP A 3.6) during her time at ALHS, despite working approximately 20 hours weekly between 2003-2005. After graduating from ALHS in June 2005 she became a full-time student at the University of Minnesota where she has maintained a

strong grade point average in spite of having surgery and continuing to work part-time.

Conclusion: Evidence supports a major gain in English proficiency and math skills as measured by the progress of test scores between 2003-2005. Grades at the University of Minnesota corroborate these findings. From the evidence we conclude that ALHS offered the student what she needed to achieve the academic skills to succeed at a university and ALHS staff support in her application. Her prior literacy and the literacy of her parents likely were factors contributing to her success.

13. Mohamud A. Mohamed, a native-speaker of Somali, was born in 1984 and, after experiencing war-related trauma, spent 6 years in refugee camps in Kenya (Ex. 1936, p. 9) coming to the US when he was 16. He reports being literate in Somali with literate parents. (Ex. 1935, p.6) and attended Koranic schools periodically where he studied the Koran in Arabic (Ex 1936, 11). He attended ALHS from age 16-21 (9/2000-7/2005) when he graduated. In addition to attending ALHS, where he had an outstanding attendance record, including perfect attendance from 2002-2005, reports attending tutoring sessions at ALHS at least once a week (Ex 1939, p 22); he also took night classes at MTS Technology High School and sought tutoring in other settings. For 6 weeks in the fall of 2004, he spent 25 hours a week working in an internship arranged by ALHS. He advanced from a raw score of 16 (level 2) on the TEAE writing in 2001 to a raw score of 28 (level 5, proficient) in 2004. He received a level 3 on the MBST writing in July 2004 and a passing level 77% on the MBST reading in 2004. On MBST math he achieved a

passing 76 %, having received 41 % on the same test in 2003. His transcript, (Ex. 1722, shows only a few low grades with an overall GPA of almost 3.1 and over 81 credits by the time he graduated. He is now an American citizen attending college and planning a career in health care.

Conclusion: Mohamud Mohamed is a success story. He came with several advantages: Some prior literacy experience and schooling, relatively less socio-economic pressure. For example, he did not work while attending school except during the brief internship after his language proficiency was relatively stronger. In addition, he had parental support, e.g. a stepfather who arranged for additional tutoring, allowing him to receive additional learning time to make up for his late start. What's more, his own motivation is evident in his excellent attendance and high performance in school.

Summary of the cases

Unrealistic expectations

Many of the 13 students whose depositions we read had unrealistic expectations about the speed with which they could learn basic and advanced academic English, acquire literacy, and learn cultural knowledge and academic content and skills. Most showed little understanding of school culture, including what a diploma represents.

Lack of alternatives

Students who arrive in their mid to late teens are forced with an almost impossible scenario: Squeeze in

12 years of education before reaching 21 or be forced to give up a diploma and a free education for a more expensive and less prestigious G.E.D. program. Schools cannot be held responsible for this unfair situation in which we are placing refugees. While accelerated programs are important and should continue, districts and states need to consider alternatives.

Factors contributing to less successful outcomes

Earlier in this report we outlined some of the factors which have been shown to contribute to less success in language learning and in school. These include starting one's education as an older learner, lacking literacy in native language, being from a low socioeconomic group, having an unstable family situation, having health problems, etc. These factors influenced learner outcomes, sometimes outweighing efforts made by the school to assist students.

SECTION 6: SUMMARY AND CONCLUSIONS

1. **Research-based models:** Research suggests there are no easy one-size fits all solutions for schools and districts facing the challenges of educating adolescent ELLs, many of whom are pre-literate and facing a variety of other challenges. A variety of research-based and well-respected approaches and methods exist and there is evidence that these are being used at ALHS. Bilingual models are not mandatory; neither the Lau Guidelines (Lau v. Nichols, 1974) nor current research demands this, nor do we believe that it is necessarily ideal for all contexts. It is clear that Abraham Lincoln is

using a Sheltered-English approach, a reasonable alternative for schools with mixed language groups.

2. **Assessment issues:** A key problem for schools and districts and ultimately students are the assessments we have at present. We agree with Short and Fitzsimmons, 2007 who suggest:

> "Without effective assessments, even experienced teachers can be hard pressed to disentangle students' difficulties in learning English from issues related to their educational background and native language literacy skills. Moreover, it is hard to distinguish normal English acquisition from academic delay and/or learning disabilities without culturally and linguistically sensitive assessments" (p. 18).

3. **Newcomer Model:** Newcomer schools are a recent phenomenon and still evolving as new waves of immigrants and refugees bring new challenges and researchers and educators continue to develop solutions. We see ALHS as a school that is continuing to improve and adjust to the needs of the students it serves. It is not surprising if these attempts do not always meet with the students' own perceptions of their needs.

4. **Qualified Teachers:** Given the national shortage of qualified teachers that urban schools with high ELL populations can recruit, ALHS has done well in finding qualified

teachers, some of whom also represent students' heritage languages and cultures.

5. **Best practices:** Judging from syllabi, there are teachers in every department who show evidence of "best practices." We find ALHS to be a fairly typical school in that there are both weaker and stronger teachers. We find ALHS teachers as a group dedicated to serving their students and working hard to over-ride the incredible disadvantages their students have when they begin school.

REFERENCES

Allen, M. (2003). *Eight questions on teacher preparation: What does the research say?* Denver, CO: Educational Commission of the States (ECS).

Baily, A. (Ed.), (2007). *The language demands of school: Putting academic English to the test.* New Haven, CT: Yale University Press.

Batalova, J., Fix, M., & Murray, J. (2005). *English language learner adolescents: Demographics and literacy achievements.* Report to the Center for Applied Linguistics. Washington, DC: Migration Policy Institute.

Brisk, M. E. (2000). *Bilingual education: From compensatory to quality schooling.* Mahwah, NJ: Lawrence Erlbaum.

Brisk, M.E, Burgos, A., and Hamerla, S. (2004). *Situational context of education.* Mahwah, NJ: Lawrence Erlbaum.

Chamot, A. U. (2005). The Cognitive Academic Language Learning Approach (CALLA): An update. In P.A. Richard-Amato and M.A. Snow (Eds.) *Academic success for English language learners* (pp. 87-102), White Plains, NY: Longman.

Cochran-Smith. (2003). Teacher quality matters. *Journal of Teacher Education, 54*(2), 95-98.

Cochran-Smith. (2004). *Walking the road: Race, diversity and social justice in teacher education.* New York: Teachers College Press.

Coll, C.G. & Magnuson, K. (2005). The psychological experiences of immigrants. In M.M. Suárez-Orozco, C. Suárez-Orozco, and D.B. Qin (2005). *The new immigration. An interdisciplinary reader.* New York City, Taylor & Francis Group.

Coleman, J.S., Campbell, E.Q., Hobson, C.J., McPartland, J., Mood, A.M., Weinfeld, F.D., York, R.L. (1966). Equality of educational opportunity. Washington, DC: U.S. Government Printing Office.

Cummins, J. (1984). *Bilingualism and special education: Issues in assessment and pedagogy.* San Diego, CA: College-Hill.

Darling-Hammond, L., French, J., & Garcia-Lopez, S.P. (2002). *Learning to teach for social justice.* New York: Teachers College Press.

Delgado-Gaitain, C. (1990). *Literacy for empowerment: The role of parents in children's education.* London; New York: Falmer Press.

Delpit, L. (1995). *Other people's children: Cultural conflict in the classroom.* New York: New Press.

Ellis, R. (1994). *The study of second language acquisition.* Oxford, UK: Oxford University Press.

Glass, G., Cahan, L., Smith, M., and Filby, N. (1982). *School Class Size: Research and Policy.* Thousand Oaks, CA: Sage Publications.

Gutstein, E. (2003). Teaching and learning mathematics for social justice in an urban, Latino school. *Journal for Research in Mathematics Education, 34*(1), 37-73.

Faltis, C. (2001). *Joinfostering: Teaching and learning in multilingual classrooms.* Upper Saddle River, NJ: Merrill Prentice Hall.

Ferguson, R.F. (1991). Paying for public education: New evidence on how and why money matters. *Harvard Journal on Legislation, 28*, 2, 465-498.

Haines, D. W. (Ed.). (1985). *Refugees in the United States: A reference handbook.* London: Greenwood Press.

Heath, S.B. (1983). *Ways with words: Language, life, and work in communities and classrooms.* New York: Cambridge University Press.

Hersi, A. (2005). Educational challenges and socio-cultural experiences of Somali students in an urban high school. *NABE Journal: Review of Research and Practice.* (1(3).

Hinkel, E. (2004). *Teaching academic ESL writing: Practical techniques in vocabulary and grammar.* Mahwah, NJ: Erlbaum.

Lee, V. E. & Smith, J. B. (1997). High School Size: Which Works Best and for Whom? *Educational Evaluation and Policy Analysis,* 19 (3), 205-28.

Jencks, C. M., Smith, H.A. Bane, M.J., Cohen, D. Gintis, H., Henys, B., & Michelson, S.M. (1972). *Inequality: A reassessment of the effects of family and schooling in America.* New York: Basic Books.

Kanstroom, M., & Finn, C. (1999). Better teachers, better schools. Washington, DC: Thomas B. Fordham Foundation.

Krashen, S. (1982). *Principles and Practice in Second Language Acquisition.* New York: Pergamon Press.

Martin, M.O., Mullis, I.V.S., Gonzalez, E.J. Gregory, K.D., Smith, T.A., Chrostowski, S.J., Garden, R.A. & O'Connor, K. M. (2000). *TIMSS 1999 International Science Report: Findings from the IEA's repeat of the third international Mathematics and Science study at the eighth grade.* Boston: Lynch School of Education, Boston College.

Molnar, A., Smith, P., & Zahorik, J. (1999). Evaluation results of the Student Achievement Guarantee in Education (SAGE) Program, 1998-99. Madison, WI: University of Wisconsin Madison, School of Education.

Murphy, P., DeArmond, M., Guin, K. (July 31, 2003). A national crisis or localized problems? Getting perspective on the scope and scale of the teacher

shortage. *Education Policy Analysis Archives, 11*(23) Retrieved July 27, 2007 from http://epaa.asu.edu/epaa/v11n23/.

Mosteller, F. (1995). The Tennessee study of class size in the early school grades. *The Future of Children,* 5, 2, 113-127.

Nieto, S. (2000). *Affirming diversity: The sociopolitical context of multicultural education.* Reading, MA: Longman.

O'Malley, M. and Chamot, A. (1994). *The CALLA Handbook: Implementing the Cognitive Academic Language Learning Approach.* Reading, MA: Addison-Wesley.

Ovando, C. J., Combs, M. C., & Collier, V. P. (2006). *Bilingual & ESL classrooms. Teaching in multicultural contexts* (4th ed.). New York, NY: McGraw-Hill.

Peregoy, S. & Boyle, O. (2005). *Reading, writing, and learning in ESL*, 4th ed. Boston, MA.: Pearson.

Portes, P. R. (1999). Social and psychological factors in the academic achievement of children of immigrants: A cultural history puzzle. *American Educational Research Journal 36*, 489-507.

Portes, A., & Rumbaut, R. (2001). *Legacies: The story of the immigrant second generation.* New York: University of California Press.

Richard-Amato, P. (1996). *Making it happen: Interaction in the second language classroom. (2nd ed.)*, White Plains, NY: Longman.

Ruiz-de-Velasco, J., & Fix, M. (2000). *Overlooked and underserved: Immigrant students in U.S. secondary schools.* Washington, DC: Urban Institute.

Scarcella, R. (2002). Some key factors affecting English learners' development of advanced literacy. In M.J. Schleppegrell & M. C. Colombi (Eds.), *Developing advanced literacy in first and second languages: Meaning with power* (pp. 209-226). Mahwah, NJ: Erlbaum.

Schleppegrell, M.J. & Columbi, M.C. (Eds.). (2002) *Developing advanced literacy in first and second languages: Meaning with power.* Mahwah, NJ: Erlbaum.

Short, D. J. & Boyson, B. A. (2004). *Creating access: Language and academic programs for secondary school newcomers.* Washington, DC: Center for Applied Linguistics.

Short, D. J. & Fitzsimmons, S. (2007). *Double the work: Challenges and solutions to acquiring language and academic literacy for adolescent English language learners – A report to Carnegie Corporation of New York.* Washington, DC: Alliance for Excellent Education.

Snow, C., Cancini, H, Gonzalez, P. and Shriberg, E. (1989). Giving formal definitions: An oral language correlate of school literacy. In D. Bloome (Ed.)

Classrooms and literacy (pp233-249). Norwood, NJ: Ablex.

Suárez-Orozco, C., & Suárez-Orozco, M. (2001). *Children of immigration.* Cambridge, MA: Harvard University Press.

Thomas, W. P., & Collier, V. P. (2002). *A national study of school effectiveness for language minority students' long-term academic achievement.* Santa Cruz, CA: Center for Research on Educational, Diversity, and Excellence.

Walsh, J. (2007). Evaluation tools sought for Minnesota's schools. *Star Tribune,* Minneapolis, MN, July 6, 2007. Retrieved July 7, 2007, http://www.innovations.harvard.edu/news/46181.html

Walsh, K. (2001). *Teacher certification reconsidered: Stumbling for quality:* Baltimore: Abell Foundation.

Waggoner, D. 1999. Who are secondary newcomer and linguistically different youth? In C. Faltis & P. Wolfe (Eds.), *So much to say: Adolescents, bilingualism, and ESL in secondary schools* (pp. 13-41). New York: Teachers College Press.

Wong-Fillmore, L. (1982). Language minority students and school participation: What kind of English is needed. *Journal of Education,* 164 (2), pp. 143-156.

Zavlasky, C. (1993). *Multicultural mathematics.* Portland, OR: J. Weston Walch.

WITNESS QUALIFICATIONS

Roberta J. Vann, Ph.D.

A. Experience and Education

I began my ESL teaching career as a Peace Corps volunteer (Ethiopia) and later served as a Fulbright Lecturer in Poland at the University of Gdansk before coming to Iowa State University. I am currently a professor in the program in TESL/Applied Linguistics in the Department of English where I teach a variety of courses in TESL/applied linguistics, most frequently graduate courses in: Literacy methods for teaching non-native speakers of English and sociolinguistics. I also supervise the practicum in TESL, which involves mentoring future teachers and regularly takes me into public schools.

My scholarly work includes a reading textbook, an edited work on oral and written language relationships and other publications which have centered around enhancing second language learning for academic purposes, including learner strategies and teacher classroom practices.

Outside of Iowa State I've done professional development for teachers around the world, including Thailand, Syria, the former Yugoslavia and Peru. I've done similar work with South African teachers in the U.S. and most recently have been working with science teachers in Iowa to incorporate appropriate strategies for ELLs into their classrooms.

Service includes heading the program for TESL certification at Iowa State University and serving on

committees in Iowa Department of Education to improve the quality of education for ELLs in Iowa.

A copy of my *curriculum vitae* is attached.

B. Publications Authored Within Last 10 Years

See *curriculum vitae* attached.

C. Compensation for Study and Testimony

$100 hourly

D. I have not testified as an expert witness at a trial or deposition.

Dr. Afra A. Hersi

A. Experience and Education

I am an Assistant professor in the Department of Education at Loyola College in Maryland. My program area is Reading Education and my work includes the preparation of undergraduate and graduate students seeking K-12 teaching certification as well as educators seeking advanced certification as Reading Specialists. I have a Ph.D. in Curriculum and Instruction with a concentration in Literacy, Language and Culture, from the Lynch School of Education at Boston College. My areas of expertise include literacy and second language development of adolescent English Language Learners, social contexts of identity for immigrant youths, critical multicultural education and teacher education, and teacher quality in urban schools. My most recent research focused on the cultural adaptation and schooling experiences of 11 African immigrant students from Cape Verde, Ethiopia, Liberia, Sierra Leone, and Somalia, nearly half (5 out of the 11) of the students had limited or interrupted formal education. Moreover, I was a volunteer for an after school program serving Somali youth in a Boston high school.

In the past six years, I planned, collaborated on, and conducted, research in urban education, bilingual education, English language learner programs, educational change and school reform. I have worked with a number of professional development projects specifically designed for urban high schools. In addition I have presented at professional conferences such as the American Education Research Association

and The American Association of Colleges of Teacher Education.

See also *curriculum vitae* attached.

B. Publications Authored Within Last 10 Years

See *curriculum vitae* attached.

C. Compensation for Study and Testimony

$100.00 hourly

D. I have never been a witness at a trial or by deposition.

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EDUCATION:

Ph.D. English Education, 1978, Indiana University
M.S. Applied Linguistics, 1973, Indiana University
B.A. English, 1970, Indiana University

REPRESENTATIVE ADMINISTRATIVE AND PROFESSIONAL EXPERIENCE

- Project Investigator, Enhancing Science Instruction for English Language Learners In Iowa, a grant ($70,000) State of Iowa, January 2005-August 2006.

  Dept. of Education State Steering Committee on Iowa Teacher Quality Enhancement Grant for English Language Learners (2005-2008).

- Review Editor, *TESOL Quarterly,* June 2001-December 2004.

- On-site Review Panel Member, NIH/DOE-funded grant proposals, "Development of English Literacy in Spanish Speaking Children," April 2000. (Washington, D.C. and Santa Barbara, CA)

- Coordinator, Academic ESL, Iowa State University, 1997-2006.

- Coordinator, ESL Certification Program, Iowa State University, 1985-present.

- Assistant Chair, Department of English, Iowa State University, November 1994-1997.

- Director, Intensive English and Orientation Program, Iowa State University, August 1980 - August 1987.

- Director, South African Teacher Training Institute (USIA grant, $52,000) Iowa State University, July 1986 - August 1986.

TEACHING and TEACHER EDUCATION

Iowa State University
Professor, English
April 1994-present
(Associate Professor, August 1983-94; Assistant Professor, 1978-1983)

Courses: TESL Methods and Materials, Literacy Methods and Materials, TESL Practicum, Sociolinguistics, Discourse Analysis, ESL Academic Writing, ESL Academic Reading.

At other sites (INVITED)

- Presenter/in-service trainer, ELL, Des Moines Area Community College Staff In-service, "Connecting with Adult Literacy Needs." October 28, 2006, Ankeny, IA.

- Workshop leader/in-service trainer, ELL, State of Iowa, Enhancing Science Education

in Iowa, In--Service Seminar for Science Teachers and District Science Consultants, August 2005 (Amana, IA.) & August 2006 (Scheman Center, Ames, IA).

- Workshop leader/teacher trainer, TEFL, YMCA, Taipei and Taiwan, Taiwan. December 1999.

- Workshop leader/teacher trainer, TEFL, United States Information Agency (USIA), Topic: Reading Skills and Strategies for the 90's, Nov. 23- Dec. 1, 1992: Khorat Teachers College, Khorat, Songkhla Teachers' College, Songkhla,; Payap University, Chiang Mai Teachers' College, & Chiang Mai University, Chaing Mai, Thailand.

- Workshop leader/teacher trainer, learner strategies, Dept of Defense, "Assessing Learner Strategies--A Whole-Learner Approach."Defense Language Institute, Monterey, CA. (with R. Abraham), August 15-17, 1990.

- Workshop leader/teacher trainer, English for Scientific Purposes, Aid for International Development (A.I.D) LaMolina Agricultural College, LaMolina, Peru. (On-site September 1986 and June 1988).

- Miscellaneous 1-2 week workshops on innovative methods for TEFL: Levice Czechoslavakia; August 1984; Damascus, Syria; August 1980; Poznan, Poland; August 1976; Banya Kavetia, Yugoslavia;

June 1976; Poznan, Poland; July 1975; Krk, Yugoslavia; February 1975; Krapinski-Toplice, Yugoslavia; January 1975.

PUBLICATIONS

BOOKS

Vann, R. J. and V. Hefley. 1984. *Viewpoints U.S.A.: A Basic ESL Reader*, New York, Heinle & Heinle (orig. Harper and Row), (286 pages).

Kroll, B. and **Vann, R.**. (eds.) 1981. *Connections and Contrasts: Exploring Speaking and Writing Relationships,* Urbana, Illinois: National Council of Teachers of English (NCTE), (236 pages).

REFEREED ARTICLES AND BOOK CHAPTERS

Richardson Bruna, K. & **Vann, R.** (In Press). On pigs & packers: Radically contextualizing a practice of science with Mexican immigrant students. *Cultural Studies of Science Education.*

K. Richardson Bruna and **R. Vann** & Perales Escudero, M. (2007) What's language got to do with it?: A case study of academic language instruction in a high school "English learner science" class. *Journal of English for Academic Purposes 6* (1), 36-54.

Vann, R. & S. Fairbairn. 2003. Linking our worlds: A collaborative academic literacy project. *TESOL Journal 12:3*, Autumn, 11-16.

Ewald, H. & **Vann, R.** 2003. "You're a guaranteed winner": Composing "you" in a consumer culture. *The Journal of Business Communication 40:2*, April, 98-117. (Awarded outstanding Article of the Year in *JBTC*, 2003).

Abraham, R. & **Vann, R.** 1996. Introduction: Validity Issues in the Assessment of L2 Learner Strategies. *Applied Language Learning 7* (1-2), 1-4.

Abraham, R. & **R. Vann.** 1996. Using Task Products to Assess Second Language Learning Processes. *Applied Language Learning 7*(1-2), 61-89.

Vann, R., F. Lorenz, and D. Meyer. 1991. Error Gravity: Faculty Response to Errors in the Written Discourse of non-native speakers of English. In *Assessing ESL Academic Writing*. L. Hamp-Lyons (ed.), Norwood, New Jersey: ABLEX, 181-195.

Vann, R. J. and R. Abraham. 1990. "Strategies of Unsuccessful Language Learners," *TESOL Quarterly,* 24: 2, 177-98. (Nominated for TESOL/Newbury House Distinguished Research Award).

Abraham, R. and **R. Vann**. 1987. "Strategies of Two Language Learners: A Case Study." In Anita Wenden & Joan Rubin (eds.) *Learner Strategies: Implications for the Second Language Teacher and Researcher*, Englewood Cliffs, NJ: Prentice Hall, 85-102. (Book received the Mildenberger Prize presented to the outstanding research publication in foreign languages and literatures for 1987).

Vann, R. J., D. Meyer, and F. O. Lorenz. 1984. "Error Gravity: A Study of Faculty Opinion of ESL Errors," *TESOL Quarterly,* Vol. 18:3, 427-440.

Vann, R. 1981. "Bridging the Gap Between Oral and Written Communications in EFL," in B. Kroll and R. Vann (eds.) *Connections and Contrasts: Exploring Speaking and Writing Relationships,* Urbana, Illinois: National Council of Teachers of English, 154-167.

Vann, R. 1979. "Oral and Written Syntactic Relationships in Second Language Learning." In C. Yorio, K. Perkins, and J. Schachter (eds.) *On TESOL '79: The Learner in Focus,* Washington, D.C.: TESOL, 322-329.

Vann, R. J. 1978. "Bilingual Education Today: The Unresolved Issues," *Language Arts*, 55(2): 150-153.

INVITED BOOK CHAPTERS (SINCE 1990)

Vann, R. K. Bruna, & M. Perales Escudero. 2006. Negotiating identities in a multi-lingual science class. In *The Sociolinguistics of Identity,* S. Omoniyi and Goodith White. (eds.), London: Continuum, 201-216.

Vann, R & C. Myers. 2001. Capitalizing on Contacts, Collaboration, and Disciplinary Communities: Academic ESL Options in a Large Research University. In *Academic Writing* Programs, I. Leki (ed). TESOL Practice Series. Alexandria: Teachers of English to Speakers of Other Languages (TESOL), 73-84.

Vann, R. 1998. Transforming Texts Through Graphic Responses. In *Understanding Learning Styles in the Second Language Classroom,* J. Reid (ed.), Prentice-Hall, 116-123.

Schmidt, H.H., and **R. Vann.** 1993. Assessing Reading Strategies Through Note-taking. In *New Ways in Teaching Reading*, R. Day (ed.) Washington, D.C.: Teachers of English to Speakers of Other Languages, Inc. (TESOL), 177-183.

INVITED REVIEWS (since 1990)

Vann, R. 2004 Review of Tannen, Deborah & James Alatis (Eds.) *Georgetown University Round Table on Languages and Linguistics 2001. Linguistics, Language, and the Real World: Discourse and Beyond. Modern Language Journal 88: 4,* 645-646. Washington, D.C.: Georgetown University Press, 2003.

Vann, R. 2004. Review of Boxer, Diana. *Applying Sociolinguistics: Domains and Face to Face Interaction.* 2002. *Modern Language Journal. 88:1, 140-141.*

Vann, R. 2003. Review of Carter, Ronald & Nunan, David. (Eds.). *The Cambridge Guide to Teaching English to Speakers of Other Languages.* New York: Cambridge University Press, 2001 in *Modern Language Journal* 87:4, 627-628.

Vann, R. 2002. Review of Breen, Micheal P. (ED.) *Learner Contributions to Language Learning: New Directions in Research.*2001 in *Modern Language Journal.* Winter 86 (4), 621-622.

OTHER PUBLICATIONS (since 2000)

J. Levis, (ed.), K. Bruna, D. Douglas, J. Olson, & **R. Vann.** 2005. Enhancing and Advancing Science for English Learners. (250-page manual for inservice teacher education), 2005.

PRESENTATIONS

PLENARY ADDRESSES (INVITED)

Vann, R. The teacher as manager: Teaching reading strategies for the 90's and beyond. Plenary address given at the Chulalongkorn University Language Institute National Seminar, Chulalongkorn University Bangkok,Thailand. December 3, 1993.

Abraham, R. and **R. Vann.** Assessing Learners' Strategies, Plenary lecture given at Defense Language Institute, Monterey, CA., August 17, 1990.

PAPERS AT PROFESSIONAL MEETINGS SINCE 1997

R. Vann. 2006. Apologies in Academic E-mails, AAAL-ACLA/CAAL Conference, Montreal, Canada, June 17th.

R. Vann, et al. 2006. Enhancing and Advancing Science for English Language Learners (EASEL): Project Update. Iowa Culture and Language Conference, Des Moines, IA, Feb. 16, 2006.

R. Vann, K. Bruna, and M. Perales. 2005. Promoting Dialog in Content Classes for English

Language Learners, Iowa Culture and Language Conference, Des Moines, IA. Feb. 17, 2005.

Richardson Bruna, K. & **Vann, R.** 2005. "Yo no carnicero" Microethnographic Account of Resistance in an Iowa "English Learner Science" Classroom .International Qualitative Research Conference, Guanajuato, México, June 1-3, 2005.

Richardson Bruna, K., **Vann, R.** & Escudero, M. 2005 The Language-Content Relationship in Science Instruction for English Learners: Examining the Didactic Tension, Annual Meeting of the American Educational Research Association, Montreal, Canada, April 11-15, 2005.

Richardson Bruna, K., **Vann, R.** "But Are You Gonna Work at the Plant?" Mexican Migrant Students' Status and Roles in an "English Learner Science" Classroom: Navigating the Borders of Language, Meaning, and Social Structure, Annual Meeting of the Society for Applied Anthropology, Santa Fe, NM, April 5-10, 2005.

Bruna, R. K. **R. Vann**, & M. Perales Escudero. 2004. "Academic Language" in Science Teaching and Learning. Cultural Diversity and Language Education Conference, University of Hawaii, Manoa, September 18th, 2004.

Vann, R. & H. Ewald. 2003. Constructing deception: Identities in junk mail. AAAL, Washington, D.C. March 23.

Vann, R. & C. Myers. 2001. Contacts, collaboration, and disciplinary communities in EAP. TESOL, St. Louis, Mo. March 3.

Vann, R. & R. Abraham. 1998. The risks of paradigm purity for applied linguistics. AAAL, Seattle, WA. March.

Vann, R., J. Call, M. Cheng, P. Ramburuth, J. Reid, E. Violand. 1998. Asian learning style preferences and classroom implications. Colloquium presented at TESOL, Seattle, WA. March.

EDUCATIONAL MATERIALS

MEDIA

R. Vann, K. Bruna, J. Levis, J.Olsen. 2006. EASEL: Enhancing and Advancing Science for English Learners. (1 hour dvd funded and prepared for the Iowa Department of Education.

A. Foegen, **R. Vann**, C. Fuhler, D. Merkley, D. Niday, and D. Schmidt. Addressing Diversity in Classrooms: Video Case Studies in Literacy: A Miller Faculty Fellowship Project on DVD and WebCt. Iowa State University, 2005.

Abraham, R., B. Matthies, B. Schwarte, and **R. Vann**, (directors and eds.) 1984. *Classroom Roles of the Teacher of English as a Second Language.* (A videotape series of six 20-minute tapes). Production originally sponsored by ISURF and later marketed by the National Council of the Teachers of English (NCTE) and distributed worldwide.

SIMULATION GAME

R. Vann, C. Sosa, L. Hirsu, K. Richardson Bruna, *Life in a a Second Language: A Simulation,* Developed for Iowa Department of Education, August 2006. Presented August 2006, April 2007, and July 2007 to a total of approximately 900 educators in the state of Iowa.

HONORS, GRANTS, AWARDS

Grant, State of Iowa, Department of Education, 2006, "Life in a Second Language, (P.I.), $5,900.

National Screening Committee, U.S. Student Fulbright Program, 2006-2007, Grants for Graduate Study Abroad.

Grant from the State of Iowa, Iowa Department of Education, "Enhancing Science Instruction for English Language Learners in Iowa. (P.I.) ($70,000) to conduct project with K.Bruna, D. Douglas, J. Levis, January, 2005-October 2006.

Outstanding Article of the Year 2003, *The Journal of Business Communication.* (Co-authored with Helen Ewald).

Special Research Initiative Grant (SPRIG), (Co-P.I.) Iowa State University ($15,000) to conduct project with K. Richardson-Bruna, "Teaching the Language of School: An Exploratory Study of the conceptualization and implementation of Science-Related Academic Language Instruction for Iowa's Language Minority Students." 2004.

Miller Fellowship Grant, Iowa State University ($25,000), with Anne Foegen et al. To create on-line video, July 2003-June 2004.

Discipline Advisory Board for Fulbright scholar awards in TEFL/Applied Linguistics (1990-1993) & 2005-07.

USIA grant to conduct ESL project in Thailand, Academic Specialist Program, November 1992.

Faculty Improvement Leave, August 1987-May, Stanford University.

USIA Training Grant, (Primary investigator). To conduct in-service education for 25 South African leaders in education. July 1986 ($58,500).

Student Affairs Human Relations Award, May 1986.

Who's Who Among American Women, 1985

Fulbright Fellow, 1974, 1975 to lecture in English at University of Gdansk, Poland.

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ACADEMIC DEGREES

Ph.D. 2007	Curriculum and Instruction: Language, Literacy and Culture, Boston College, Lynch Graduate School of Education, Chestnut Hill, Massachusetts,
M.Ed. May 2002	Curriculum and Instruction, Boston College, Lynch Graduate School of Education, Chestnut Hill, Massachusetts

B.S. May 1993 History, Social Studies, and Secondary Education, Radford University, Radford City, Virginia
Licensure: Secondary History and Social Studies

PROFESSIONAL EXPERIENCE

2005- Present **National Manager of Curriculum and Instruction**, BELL (Building Educated Leaders for Life) Foundation, Boston, MA.

- Served as national coordinator for a leading educational non-profit serving 8,000 elementary school students in Massachusetts, New York, Maryland and the District of Columbia.
- Managed a $600,000 budget and negotiated with curriculum vendors.
- Aligned after school and summer reading and math curriculum to state standards.

Developed and oversaw the implementation of professional development for certified teachers and college students that serve as tutors.

2004-2005 **Teachers for a New Era Research Assistant,** Boston College, School of Education and Graduate School of Arts & Sciences. Chestnut Hill, MA. Funded by the Carnegie Corporation.

- Conducted qualitative research exploring Arts and Science faculty mentoring of English and History

secondary student teachers in urban placements.

- Worked with a collaborative research team to design interview and observation protocols for a planned longitudinal study following graduates of the BC teacher education program into their first two years of practice.

2002-2004 **Title II Research Assistant**, Massachusetts Coalition for Teacher Quality and Student Achievement, Boston College, Massachusetts.

- Collaborated on the improvement of parent engagement in an urban high school through a school-university partnership.
- Co-conducted a qualitative research project on pre-service teachers' perceptions of the field-based graduate course "Social Contexts of Education."
- Collaborated with in-service teachers on improving community engagement English language learners in mainstream classrooms.

2002-2004 **Program Director**, Perseverance Curriculum Project, Boston Women's Heritage Trail, Boston MA

Developed and implemented a values-based curriculum highlighting the contributions of women. The

curriculum was implemented in eight Boston Public middle schools.

PUBLICATIONS

Peer reviewed Book chapters

2008 **Hersi, A.** & Shirley, D. From Radical Visions to Messy Realities: Complexities of Urban Education and the Preparation of Teacher Educators. In F. Peterman. *Partnering to Prepare Urban Teachers: A Call to Activism.* Washington DC: AACTE.

Peer reviewed articles

2006 Shirley, D., **Hersi, A.,** MacDonald, E., Sanchez, M., Skidmore, C. & Tutwiler, P. Bringing the Community Back in: Change, Accommodation, and Contestation in a School and University Partnership. *Equity & Excellence in Education,* Amherst, Massachusetts, February, 2006, pp 27-36.

2005 **Hersi, A.** (2005). Educational challenges and sociocultural experiences of Somali students in an urban high school. *NABE: Journal of Review of Research and Practice,* Vol. 3, Mahwah, NJ: Lawrence Erlbaum, pp 125-143.

TEACHING EXPERIENCE

Fall 2006 **Instructor**, ED 101 "Teaching Language Arts," Lynch School of Education, Boston College

- Undergraduate course—required for elementary

education majors; focused on oral and written language development in addition to a wide variety of teaching methods in language arts.

Summer 2005 **Instructor**, ED436 "Curriculum Theory and Practice," Lynch School of Education, Boston College

- Graduate course—explored the link between curriculum theory and practice; the contemporary educational and political issues driving curriculum reform and its impact on educational practices.

Spring 2005 **Instructor**, SOC104 "Sociology of Education," Sociology Department, Brandeis University, Waltham, Massachusetts

- Undergraduate course—explored macro and micro-level sociology of schooling, school culture, educational policies, institutionalized inequity and theri impact on schools and communities.

Summer 2004 **Co-Instructor**, ED435 "Social Context of Education," Lynch School of Education, Boston College

- Graduate course—examined the social, political, and economic factors that influence the context of education.

Fall 2003 **Co-Instructor**, ED435 "Social Context of Education," Fall 2003 Lynch School of Education, Boston College

- Graduate course, taught on-site at an urban high school; focused on the relationships between school-community engagement.

Fall of 2001 **Pre-Service Practicum Experience Supervisor**, Lynch School of Education, Boston College,

- Conducting classroom observations, and mentoring and evaluation of pre-service teachers in an urban secondary practicum placement. Facilitated student-teachers' inquires into their content-area knowledge, pedagogy, and social-cultural context of schooling and their impact on instruction.

1999-2001 **Social Studies Teacher**, Lexington High School, Lexington Public School, Lexington, MA

- Taught U.S. and World History mainstream and an inclusive classrooms.
- Developed and implemented curriculum for social studies elective courses.

1998-1999 **World Studies Teacher**, North High School, Worcester Public School, Worcester, MA

- Taught World History to ninth grade students as part of interdisciplinary team.
- Established an after school homework center.

1993-1998 **World History teacher**, Robinson and Lake Braddock Secondary Schools, Fairfax County Public Schools, Fairfax, VA 22193

- Team taught an ESL World History course and an interdisciplinary World Civilizations Humanities course.

INVITED LECTURE

2004 **Hersi, A.,** "The education of Somali youth: Comparative experiences in North American and Europe." International Conference on Somalis in America: The Challenges of Adaptation, St. Paul, Minnesota.

PROFESSIONAL CONFERENCES AND PRESENTATIONS

2006 **Hersi, A.,** "You are not a white. You are a Black just like me! How recent African immigrants make sense of race in an urban newcomer high school." Institute for the Study and Promotion of Race and Culture Diversity Challenge, Boston College

2005 **Hersi, A.,** Skerrett, A., Gutierrez, K., Reid, S., & Watts, L., "For the new scholar: The

art of preparing proposals to present educational research." Holmes Partnership Annual Meeting, Philadelphia. PA.

2004 Shirley, D., **Hersi, A**., MacDonald, E., Sanchez, M, & Tutwiler, P., "Building communities of inquiry and practice: Maximizing learning in the social contexts of education." The American Association of Colleges of Teacher Education Annual Meeting, Chicago, IL.

2004 Shirley, D., **Hersi, A.,** MacDonald, E., Sanchez, M, & Tutwiler, P., "Successes and challenges of multifaceted collaborations within a school-university partnership." American Education Research Association Annual Meeting, San Diego, California.

2004 **Hersi, A.**, 2004 "Double alienation: The educational experience of Somali in an urban highschool." National Association of Bilingual Education (NABE) Annual Conference, Albuquerque, NM.

2004. Shirley, D., **Hersi, A.,** MacDonald, E., Sanchez, M, & Tutwiler, P., "Teacher education as community organizing: Exploring the social contexts of education to promote parent engagement in urban schools." Holmes Partnership Annual Meeting, San Diego, CA.

2003 **Hersi, A.,** "The Education of Somali students: The role of schools." 46th Annual Meeting of the African Studies Association, Boston, MA.

2003 Shirley, D., **Hersi, A.,** MacDonald, E., Sanchez, M, & Tutwiler, P., Williams, W. "School-university collaboration for urban school reform: Challenges and strategies for overcoming them." Holmes Partnership Annual Meeting, Washington, DC.

WORKSHOP PRESENTER AND GUEST SPEAKER

2006 Co-presented a 20 hour institute with a Boston College collaborative team on "Teaching Reading and Writing to Limited English Proficient Students" to an urban high school.

2005 Designed and presented professional development in-service on "Effective Strategies for Bilingual Learners" for teachers and tutors working with an elementary after school program.

2005 Designed and presented professional development in-service on "Culturally Relevant Teaching" for elementary school teachers.

2004 Guest Speaker on "Working with Bilingual Parents" in Spring 2004, "Teaching Bilingual Students" at Boston College.

PROFESSIONAL SERVICE

2006 Regional Journalistic Priorities for Education: The Next 5 Years, an invitation only forum by WGBH, the Nellie Mae Education Foundation, and The Boston Foundation

2005 Reviewer *Educational Policy Journal*

2004-2005	Dean Search Committee, Boston College, Lynch School of Education
2002-2004	Reviewer *Journal of Teacher Education*
2002-2004	Graduate Student Recruitment and Outreach, Lynch School of Education Graduate Admissions Office

PROFESSIONAL AFFILIATIONS

American Education Research Association
American Association of Applied Linguists
African Studies Association
Holmes Scholar
National Bilingual Education Association
National Council of Teachers of English
National Council of Social Studies Teachers
(UNITE) Urban Network to Improve Teacher Education

COMMUNITY SERVICE

Volunteer tutor for beginning English as a second language (ESL) classes for adults Cambridge, MA
Volunteer tutor for Somali Youth Program, Boston, MA

DIGITAL LITERACY

Experience with SPSS, HyperResearch, Atlasti, PowerPoint, and other Microsoft software.

LANGUAGES

Native Somali Speaker
Experience translating Somali
Beginning Spanish